

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1106

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

DOCKET NO. 77-1106

B
P/S

UNITED STATES OF AMERICA, Appellee

-v-

HAROLD NISNEWITZ, Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT NISNEWITZ'S APPENDIX

HAROLD NISNEWITZ, PRO SE
Appellant
61-48 Austin Street
Rego Park, N.Y. 11374
Tel. (212) 457-2556



PAGINATION AS IN ORIGINAL COPY

APPENDIX

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JUDGE OWEN

74 APR 96

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U. S.: 001A
rs.	Patricia M. Hynes, AUSA
HAROLD NISNEWITZ- all cts.	264-6221
JOSE RAMOS JR.- 7	
THOMAS LA MORTE- 7	
	For Defendant:

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
(12)					
Fine,		1/27/74	Judge Owen	✓	
Clerk,		1/27/74	Miss		✓
Marshal, 83-2-1-3					
Attorney,					
Commissioner of Tax T.18					
XXXXXX Sec. 1014 & 371					
False statements on loan					
appl. to insured banks.(1-6)					
Consp. so to do.(Ct.7)					
(Seven Counts)					

DATE	PROCEEDINGS
1-30-74	Filed indictment.
2-11-74	All defts.(attys. present) Plead not guilty. Ordered photographed and fingerprinted. Nisnewitz(\$10,000. P.R.B. secured by \$1,000.) Ramos (P.R.B.(refer to clerk's entry.) La Norte as above. Case assigned to Judge Owen. Lasker, J.
2-11-74	HAROLD NISNEWITZ- Filed notice of appearance of Martin A. Litwack - 801 2nd Ave, NYC 10017 Tel#686-2540.

002A

DATE	PROCEEDINGS
1-11-74	THOMAS J. LamORTE= Filed Notice of Appearance of Henry A. Drescher - 570 Seventh Ave, NYC 10018 Tel#214-14425.
2-21-74	THOMAS LA MORTE= Filed Notice of Motion for Varied Relief.
2-26-74	JOSE RAMOS - Filed deft's Financial affdvt, CJA 23.
2-26-74	THOMAS LA MORTE= Filed letter dtd. 2-13-74 with memo endorsed-Time for motions is extend to 3-14-74--Owens, J.
3-4-74	THOMAS LA MORTE= Filed plttf's affdvt in Opposition and Memorandum of Law in Oppositio to Deft's motion for Varied Relief..
3-13-74	THOMAS LA MORTE= Filed MEMO ENDORSED on Deft's motion for Varied Relief filed 2-21-74.. Motion granted in part and denied in part as per the Stenographic Minutes of the Argume SO ORDERED, 3-8-74 -- OWEN, J. (Mailed Notice)
4-30-74	DEFT. RAMOS Present with atty Michele Hermann - change of Plea to Guilty (count 7) P.S.I. Ordered. Sentence for June 13th at 4:30 p.m. Bail continued Owen J.
5-1-74	JOSE RAMOS JR.= Filed Defts. Acknowledgment of his constitutional rights.
5-1-74	Deft. Nisnenitz Present W/Atty. Friedman - For Trial Deft. LA Morte Present W/Atty. Drescher - For Trial - Jury Selected - Trial Begun.
5-2-74	Trial Cont'd & Adjourned until 5/6/74 at 10:00 a.m.
5-6-74	Trial Cont'd.
5-7-74	Trial Cont'd.
5-8-74	Trial Cont'd.
5-9-74	Trial Cont'd
5-10-74	Jury Deliberations Cont'd. Verdict - Nisnenitz Guilty all Counts. LA Morte Not Guilty. Owen J.

Continued

C. 110 Rev. Civil Docket Continuation

OWEN J.

DATE	PROCEEDINGS	Date Order or Judgment Note
5-10-74	Trial Cont'd. - Sentence Date for Nisnwitz set for 6/14/74 at 4:30 P.M. Room 1505. P.S.I. Ordered Bail Cont'd. Owen J.	
5-17-74	HAROLD NISNEWITZ-Filed deft's CJA Form #23-Financial Affidavit.	
5-21-74	JOSE RAMOS, JR.-Filed JUDGMENT and ORDER OF PROBATION (atty present)-It is adjudged that the Imposition of Sentence is hereby SUSPENDED and deft is placed on UNSUPERVISED PROBATION for a period of 2 YEARS.....OWEN,J.	
5-8-74	ALL DEFTS.-Filed Govt's, memorandum of law.	
5-3-74	HAROLD NISNEWITZ and THOMAS LA MORTE-Filed Govt's, memorandum of law.	
5-11-74	HAROLD NISNEWITZ-Filed JUDGMENT and COMMITMENT (atty present) It is adjudged that the deft. is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of ONE (1) YEAR AND ONE DAY on each of Counts 1 through 6, said sentences to run CONCURRENTLY. In addition to the foregoing, the Deft. is sentenced to ONE (1) YEAR AND ONE (1) DAY on Count 7. Sentence on Count 7 to run CONSECUTIVELY with the sentence imposed on Counts 1 through 6. The EXECUTION of sentence on Count 7 is SUSPENDED and on that Count deft. is placed on PROBATION for a period of FIVE (5) YEARS, to commence upon expiration of sentences imposed on Counts 1 through 6, subject to the standing probation Order of this Court. Bail is continued pending appeal.... ...Owen,J.	
5-12-74	HAROLD NISNEWITZ-Filed deft's, financial affidavit.	
5-14-74	HAROLD NISNEWITZ-Filed deft's, memorandum of law in support of motion to acquit.	
5-15-74	HAROLD NISNEWITZ-Filed Govt's, memorandum of law.	
5-17-74	HAROLD NISNEWITZ-Filed notice of appeal from the final judgment entered on 7-11-74. Mailed notice to Harold Nisnwitz, 8734 Parsons Blvd., Jamaica, N.Y. 11432, U.S. Attorneys Office, Attn: Patricia M. Hynes, Esq.	
5-18-74	HAROLD NISNEWITZ-Filed CJA 20 Copy 2-approving payment to H. Howard Friedman dtd. 5-27-74.....Owen,J. (original mailed to ADM. OFFICE).	
5-13-74	Filed stipulation designating exhibits for the appeal.	
5-74	HAROLD NISNEWITZ-Filed notice of certification of supplemental record on appeal	
7-74	HAROLD NISNEWITZ-Filed CJA copy 5 appointing H. Howard Friedman	
2-74	HAROLD NISNEWITZ-Filed notice of certification of record on appeal.	
28-74	HAROLD NISNEWITZ-Filed notice of certification and transmittal of supplemental record on appeal.	
28-74	FILED TRANSCRIPT DTD MAY -3, 14, 15, 16, 1974	
23-74	HAROLD NISNEWITZ-Filed ORDER that deft's, attorney, David M. Brodsky, obtain the services of a psychiatrist on behalf of the deft. in his family setting, it appearing the deft. is financially unable to obtain such services.....Owen,J. (mailed notice)	

-over-

DATE	PROCEEDINGS	Date Of Judgment
11-27-74	HAROLD NISNEWITZ-Filed true copy of U.S.C.A. mandate. The Judgment of the District Court is hereby affirmed. Judgment Entered 11-26-74-Clerk.	
1-6-75	Filed transcript of record of proceedings, dated 7-11-1974	
1-17-75	HAROLD NISNEWITZ-Filed commitment & entered return. Deft. delivered to Warden, Federal Detention Headquarters, N.Y.C. on 1-13-75.	
2-13-75	HAROLD NISNEWITZ-Filed deft's. affidavit & notice of motion for reduction of sentence.	
2-19-75	HAROLD NISNEWITZ-Filed CJA Form 21 copy 5 appointing Gurston D. Goldin, M.D. a psychiatrist to examine the deft. Owen, J.	
2-19-75	HAROLD NISNEWITZ-Filed CJA Form 21 copy 2 approving payment to Gurston D. Goldin. dated 2-18-75. Owen, J.	
2-21-75	HAROLD NISNEWITZ-Filed MEMO ENDORSED on deft's. motion for reduction of sentence filed 2-13-75. Upon a careful consideration of the motion papers and upon a review of the entire proceeding, the motion is denied. SO ORDERED. Owen, J. (am)	
2-24-75	HAROLD NISNEWITZ-Filed Govt's. affidavit in opposition to deft's. motion for reduction of sentence.	
2-28-75	Filed transcript of proceedings, dated 3-11-75	
11-8-76	Filed DEFTS Notice of Motion for order for new trial pur to ERule 33 FRCP.	
11-23-76	HAROLD NISNEWITZ- Filed Memo. End. on dfts. motion dtd. 11-8-76 for a new trial. Motion denied. Owen J. (Mailed copy & notice)	
1-19-77	Harold Nisnewitz - Filed Memo. End. on Unfiled Notice of Appeal I decline to certify it. Owen J. (maile copy & notice)	
1-31-77	HAROLD NISNEWITZ - Filed Notice of Appeal from motion for new trial entered on 11-23-76. (am) Harold Nisnewitz	
2-1-77	Filed Notice of Certification of record to the USCA.	
3-1-77	Filed 1st Supplemental Record to the U.S.C.A.	
3-1-77	Filed transcript record of proceedings dtd: 5/1, 2, 6, 7, 1974 5/8, 9, 10, 7/11/74	
3-1-77		

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2-1979
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v -

HAROLD NISNEWITZ, JOSE RAMOS, JR.,
and THOMAS LA MORTE,

Defendants.

INDICTMENT

74 Cr. 96 RD

The Grand Jury charges:

On or about the dates hereinafter set forth, in the Southern District of New York and elsewhere, HAROLD NISNEWITZ, the defendant, unlawfully, wilfully and knowingly did make and cause to be made and did aid, abet, counsel, command, induce and procure the making of false statements, reports and wilful overvaluations of property and security, as hereinafter set forth, in and in connection with loan applications submitted by persons, hereinafter set forth, to banks, hereinafter set forth, the deposits of which were then insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the action of said banks to approve said loan applications.

<u>COUNT</u>	<u>DATE</u>	<u>LOAN APPLICANT</u>	<u>BANK</u>	<u>FALSE STATEMENTS</u>
1	1/6/72	NATALIE V. PRENCLAU	First Nat'l City Bank	NATALIE PRENCLAU was employed by the Salvation Army.
2	2/9/72	ROGER LaFERLA	First Nat'l City Bank	ROGER LA FERLA was employed by Johnna Graphics at a salary of \$12,740 and earned additional income of \$3500 as a carpenter; the purpose of the loan was for wedding expenses.

COUNT	DATE	LOAN APPLICANT	BANK	FALSE STATEMENTS
3	1/24/72	GUSTAVO RAMIREZ	Manufacturers Hanover Trust	GUSTAVO RAMIREZ earned an annual salary of \$10,256 and earned additional income of \$3500 as a part-time salesman; the purpose of the loan was for furniture and a vacation; GUSTAVO RAMIREZ was born on March 1, 1947.
4	2/3/72	GUSTAVO RAMIREZ	First Nat'l City Bank	GUSTAVO RAMIREZ earned an annual salary of \$10,256 and earned additional income of \$3500 as a part-time salesman; the purpose of the loan was for furniture and a vacation; GUSTAVO RAMIREZ was born on March 1, 1947.
5	12/20/71	JOHNNY A. RODRIGUEZ	Manufacturers Hanover Trust	JOHNNY A. RODRIGUEZ was employed and earned an annual salary of \$16,640 and earned additional income of \$4000 as a salesman; the purpose of the loan was to renew the apartment of RODRIGUEZ.
6	2/2/72	JOHNNY A. RODRIGUEZ	First Nat'l City Bank	JOHNNY A. RODRIGUEZ was employed and earned an annual salary of \$20,020 and earned additional income of \$4000 as a salesman; the purpose of the loan was to renew the apartment of RODRIGUEZ.

(Title 18, United States Code, Sections 1014 and 2).

COUNT SEVEN

The Grand Jury further charges:

From on or about January 1, 1971 up to and including the date of the filing of this Indictment, in the Southern District of New York and elsewhere, HAROLD HISNEWITZ, an accountant, and JOSE RAMOS, Jr., who at all relevant times was a loan officer of First National City Bank and THOMAS LA MORTE, who at all relevant

PHH:nc.
72-1079
H50-5

times was a loan officer of National Bank of North America, the defendants, and Natalie V. Prenclau, Roger La Perla, Gustavo Ramirez and Johnny A. Rodriguez (hereinafter "loan applicants") named herein as co-conspirators but not as defendants, unlawfully, wilfully and knowingly did conspire, confederate and agree among themselves and with other persons to the Grand Jury known and unknown, to commit offenses against the United States, to wit, to violate Title 18, United States Code, Section 1014, by making false statements, reports and wilful overvaluation of property and security in connection with loan applications submitted by said loan applicants, and others, known and unknown to the Grand Jury, to First National City Bank, Manufacturers Hanover Trust, National Bank of North America, and others, all banks, the deposits of which were then insured by the Federal Deposit Insurance Corporation.

(a) It was part of said conspiracy that said loan applicants and others, known and unknown to the Grand Jury would seek bank loans and invest any funds obtained thereby in "Dare To Be Great", a pyramid selling program.

(b) It was further part of said conspiracy that defendant NISNEWITZ would charge said loan applicants and others, known and unknown to the Grand Jury, a fee ranging from approximately \$100 to \$150 to cause loan applications containing false information to be prepared.

(c) It was further part of said conspiracy that defendant NISNEWITZ would refer said loan applicants and others, known and unknown to the Grand Jury, to defendant RAMOS at the First National City Bank and to defendant LA MORTE at the National Bank of North America for assistance in causing said loans applications to be processed by said banks and that defendants RAMOS and LA MORTE would receive fees from NISNEWITZ and others.

OVERT ACTS

In furtherance of said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York:

1. On or about January 6, 1972 a loan application was submitted by Natalie V. Prenclau to First National City Bank.

2. On or about February 3, 1972 a loan application was submitted by Gustavo Ramirez to First National City Bank.

(Title 18, United States Code, Sections 371 and 2)

FOREMAN

PAUL J. CURRAN
United States Attorney

UNITED STATES DISTRICT COURT
FOR THE

56160-JK

009A

~~SOUTHERN DISTRICT OF NEW YORK~~

To MR. HAROLD NISNEWITZ
160-20 95th St.,
Address Howard Beach, N. Y.

Docket No. 74 Cr 96

In accordance with authority conferred by the United States Probation Law, you have been placed on probation this date, JULY 11, 1974, for a period of FIVE(5) YEARS by the Hon. RICHARD OWEN United States District Judge, sitting in and for this District Court at New York City, subject to the standing probation order of this Court. (See other side).

CONDITIONS OF PROBATION

It is the order of the Court that you shall comply with the following conditions of probation:

- (1) You shall refrain from violation of any law (federal, state, and local). You shall get in touch immediately with your probation officer if arrested or questioned by a law-enforcement officer.
- (2) You shall associate only with law-abiding persons and maintain reasonable hours.
- (3) You shall work regularly at a lawful occupation and support your legal dependents, if any, to the best of your ability. When out of work you shall notify your probation officer at once. You shall consult him prior to job changes.
- (4) You shall not leave the judicial district without permission of the probation officer.
- (5) You shall notify your probation officer immediately of any change in your place of residence.
- (6) You shall follow the probation officer's instructions and advice.
- (7) You shall report to the probation officer as directed.

The special conditions ordered by the Court are as follows:

7/11/74: ONE YEAR AND ONE DAY ON EACH OF CTS. 1 thru 6, TO RUN CONCURRENTLY.
ONE YEAR AND ONE DAY ON CT. 7, TO RUN CONSECUTIVELY WITH SENTENCE IMPOSED ON CTS 1 THRU 6. - EXECUTION ON COUNT 7 IS SUSPENDED, AND ON THAT COUNT DEFENDANT IS PLACED ON PROBATION FOR PERIOD OF FIVE(5) YEARS, TO COMMENCE UPON EXPIRATION OF SENTENCE IMPOSED ON CTS 1 thru 6.

(Bail continued pending appeal).

In order to insure compliance with the Conditions of Probation, you may NOT serve as an informer while on probation, and you must promptly and truthfully answer all inquiries directed to you by the Probation Officer.

I understand that the Court may change the conditions of probation, reduce or extend the period of probation, and at any time during the probation period or within the maximum probation period of 5 years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

I have read or had read to me the above conditions of probation. I fully understand them and I will abide by them. These conditions were made an Order of this Court, June 6, 1972. (See copy attached).

(Signed)

Harold Nisnewitz 7/19/75

Probationer

Date

You will report as follows:

Mr. James F. Haran
Chief U.S. Probation Officer
307 U.S. Court House
225 Washington Street
Brooklyn, N.Y. 11201

Anthony D. [Signature]
U.S. Probation Officer

2/19/75
Date

At a ~~Suited Term~~ of the District Court of the United States held in and for the Southern District of New York, in the United States Courthouse, in the Borough of Manhattan, City of New York on the 6th day of June, 1932.

PRESENT:

THE HONORABLES JOHN C. KNOX, HENRY W. GODDARD, WILLIAM BONDY, FRANK J. COLEMAN, JOHN M. WOOLSEY, FRANCIS G. CAFFEY
ALFRED C. COXE, ROBERT P. PATTERSON

IN THE MATTER
OF
GENERAL CONDITIONS OF PROBATION
where execution of sentence in
criminal cases is suspended.

M-11-183

O R D E R

Due deliberation having been had, it is

ORDERED, that effective June 7, 1932, the following shall be the conditions of probation applicable to all persons placed on probation by this Court.

1. The probationer shall **not** violate any State or Federal Penal Law.
2. He shall live a clean, honest, and temperate life.
3. He shall not frequent undesirable places and localities, nor shall he associate with undesirable persons.
4. He shall seek and continue in steady employment and shall immediately notify the Probation Officer of any change in or cessation of employment.
5. Upon change of residence, he shall notify the Probation Officer.
6. He shall not leave the jurisdiction of this Court without permission of the Probation Officer.
7. He shall contribute regularly to the support of those whom he is legally bound to support.
8. He shall follow the Probation Officer's instructions and advice regarding his recreational and social activities.
9. He shall report at such times and places as the Probation Officer shall direct.
10. He shall obey such other conditions as may be imposed by the Probation Officer to insure compliance with the foregoing provisions in paragraphs 1 to 9 inclusive.

Acceptance of probation by the defendant shall constitute acceptance of the conditions hereinabove set forth.

JOHN C. KNOX

U.S.D.J.

HENRY W. GODDARD

WILLIAM BONDY

FRANK J. COLEMAN

JOHN M. WOOLSEY

FRANCIS G. CAFFEY

ALFRED C. COXE

ROBERT P. PATTERSON

FILED

U.S. DISTRICT COURT

JUNE 8, 1932

S.D. of N.Y.

GENERAL DOCKET

UNITED STATES COURT OF APPEALS

FOR THE
SECOND

CIRCUIT

APPEAL FROM

SOUTHERN DISTRICT

CASE NO.

74 1971

TITLE OF CASE

ATTORNEYS FOR ~~APPELLANT~~

~~Appellant~~
Appellee

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

HAROLD NISNEWITZ, JOSE RAMOS JR., THOMAS LA MORTE,

Defendants,

HAROLD NISNEWITZ,

Defendant-Appellant

United States Attorney
United States Courthouse
Foley Square
New York, N.Y. 10007
(Patricia M. Hynes, Esq)

ATTORNEYS FOR ~~APPELLEE~~

~~Appellee~~
Appellant

David Brodsky, Esq.
Guggenheimer & Untermeyer
80 Pine Street
New York, N.Y. 10005
(344-2040)

CR
FP

Cal # 397

NO. BELOW: 74-CR-96

JUDGE BELOW: Owen

DATE OF JUDGMENT: 7-11-74

NOTICE OF APPEAL FILED: 7-17-74

DATE

ACCOUNT OF APPELLANT

Received

Disbursed

REMARKS

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

012A

CASE NO. **74 1971** || U.S.A. v. Harold Nisnewitz, et al.

DATE	FILINGS—PROCEEDINGS	Filed
7-18-74	Filed Form A (Nisnewitz)	
7-18-74	Filed copy of notice of appeal	
7-18-74	Filed copies of docket entries	
7-18-74	Filed financial affidavit	
7-24-74	Filed order continuing David Brodsky, Esq. counsel for appellant Harold Nisnewitz; record by 8-6-74 w/dismissal in default; removal of record; 7 xerox copies of appellant's brief and appendix by 9-5-74 w/dismissal in default; appellee's brief and appendix, if any, by 10-4-74; argument week of 10-14-74 (Nisnewitz)	
7-24-74	Filed CJA-20 continuing David Brodsky, Esq. counsel for appellant Copies mailed to A.O. and counsel (voucher No. 99798)	
8-2-74	Filed motion for an extension of time to file brief, appellant, w/pfs	
8-2-74	Filed record (original papers of district court)	
8-5-74	Received stipulation re: extension of time to serve a designation of appendix	
8-5-74	Filed supplemental record (original papers of district court)	
8-7-74	Filed amended order: record by 8-6-74 w/dismissal in default; removal of record; 7 xerox copies of appellant's brief and appendix by 10-4-74 w/dismissal in default; U.S. brief, and appendix, if any by 11-4-74; argument ready to be heard by 11-11-74	
8-14-74	Filed Form B (court reporter)	
8-29-74	Filed second supplemental record (original papers of district court)	
10-4-74	Filed briefs and appendices, appellant, with pfs	
11-4-74	Filed 4 page proof copies brief, appellee w/pfs	
11-7-74	Filed briefs, appellee, with pfs	
11-11-74	Argument heard (By: Friendly, Feinberg, Gurfein)	
11-11-74	Affirmed in open court	
11-11-74	Filed Judgment	

GENERAL DOCKET
UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT

CASE NO. 74-1971

U.S.A. V. HAROLD NISNEWITZ, et c.

DATE

FILINGS—PROCEEDINGS

Filed

11-20-74 Issued mandate (judgment)

6-24-75 Original, supplemental, second supplemental record returned to district court

7-8-75 Filed receipt of return of original, supplemental, second supplemental record to district court

January 8, 1975

Honorable Richard Owen
United States District Judge
26 Federal Plaza
New York, N.Y. 10007

Re: United States v. Nisnewitz

Dear Judge Owen:

As your Honor knows, the conviction of my client, Harold Nisnewitz, was affirmed by the Court of Appeals in November. I have determined on behalf of my client, that no petition for a writ of certiorari will be filed, and have informed Assistant United States Attorney Patricia M. Hynes of that fact.

Miss Hynes has now filed a notice of surrender for Mr. Nisnewitz to commence service of his sentence on January 13, 1975.

As your Honor will recall, this Fall I sought and obtained an order for a psychiatrist to examine my client because of the intense emotional stress that he had been and was suffering. Dr. Gurston Goldin was appointed and has examined Mr. Nisnewitz on several occasions. On Dr. Goldin's suggestion that further psycho-therapy was necessary, Mr. Nisnewitz has been under psychiatric help from a Dr. Teitelbaum at Queens General Hospital.

From my conversations with Dr. Goldin it is apparent to me that Mr. Nisnewitz is suffering from a personality disorder which causes him to need continued psychiatric treatment. In addition, the emotional stability of his family, caused in part by the stress and anxiety of the indictments, trials, conviction and impending imprisonment, has been a source of great concern to me and to his psychiatrists.

Honorable Richard Owen

-2-

I have requested both Dr. Goldin and Dr. Teitelbaum to furnish me with written reports of their analysis and findings which I expect to be forwarded to me in the immediate future and which I intend to submit to your Honor in conjunction with a motion for a reduction of sentence. I intend to file this motion within the next two weeks.

I expect to submit to your Honor materials in addition to Mr. Nisnewitz's psychiatric history in support of my motion for which I believe there are good grounds.

Accordingly, I respectfully request that the surrender date of January 13th be adjourned for at least one month so that Mr. Nisnewitz may continue with his psychiatric treatment and I may have time to submit my motion for a reduction of sentence to your Honor.

Thank you for your courtesy and cooperation.

Very truly yours,

David M. Brodsky

DMB;mim

cc: Patricia M. Hynes, Esq.

Assistant United States Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA :

-against- :

HAROLD NISNEWITZ, :

Defendant. :
-----X

NOTICE OF MOTION

74 Cr. 96 RO

SIPS:

PLEASE TAKE NOTICE THAT upon the annexed affidavit of
Harold Nisnewitz, sworn to this 4th day of November, 1976,
the undersigned will move this Court at a place and time,
to be set by the Court, to grant a motion for a new trial,
pursuant to Rule 33 of the Federal Rules of Criminal
Procedure.

Dated 4th day of November, 1976

Harold Nisnewitz

83-11 139th Street

Kew Gardens, N.Y. 11435

(212) 847-1098

TO: United States Attorney
Southern District of New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X	:	
UNITED STATES OF AMERICA	:	
-against-	:	<u>AFFIDAVIT</u>
HAROLD NISNEWITZ,	:	74 CR 96 RO
Defendant.	:	
-----X	:	

STATE OF NEW YORK
COUNTY OF NEW YORK
SOUTHERN DISTRICT OF NEW YORK

I, Harold Nisnewitz, being duly sworn, deposes and says:

I, the undersigned, move that this Court grant a motion for a new trial based on newly-discovered evidence, in the interest of justice which has been discovered after the trial; this newly-discovered evidence will prove beyond a reasonable doubt that it is material to the issues involved, and would probably produce an acquittal in a new trial.

I ask that a motion for a new trial be granted on the grounds of incompetency of my Attorney, H. Howard Friedman of 295 Madison Avenue, New York City, appointed pursuant to the Federal Criminal Justice Act which only came to light upon the scrutinization of the trial transcript.

It is my contention that said Attorney, H. Howard Friedman, in representing me before this Honorable Court, did not adequately prepare my defense nor defend me at the trial in a vigorous and competent manner in which the public would expect of attorneys who in essence are Officers of the

Court. Since said Attorney is a member of a Panel of Attorneys appointed for indigent defendants in this Court, I had no reason to suspect at that time that his representation would be anything less than competent. Counsel made serious errors before, during, and after the trial, which culminated in my conviction and subsequent incarceration.

I am enclosing as Exhibit "A" a voucher submitted to the Court by Mr. Friedman for services rendered. Contrary to claims made in the voucher submitted by said Attorney, I have never had the amount of hours, seven (7), as asserted to by Mr. Friedman for interviews and conferences. See letters attached, Exhibit "B".

As to his contention of obtaining and reviewing records, his claim of three (3) hours is not justified. Aside from requesting me to bring him all records in my possession, of which I had very little, at no time did said Attorney make any effort to acquire any documentation, on his own as will be brought out later in this motion.

As to the ten (10) hours claimed for legal research and brief writing, the claim is not valid. At no time did Mr. Friedman make any formal motions or file briefs with the Court on my behalf.

Based upon the aforementioned, as evident in the voucher, filed by said Counsel, H. Howard Friedman, the Court recognized his claims as not truthful and reduced his over-all fee for services rendered from a total of \$2,020.00 to \$1,000.00. In reducing Mr. Friedman's voucher for services rendered, the Court has recognized his untruthfulness, beyond a reasonable doubt and lack of preparation of my defense. As to a rebuttal of this claim the Court would not have reduced said Attorney's fee. It is therefore

clear that as to pre-trial preparation, little, if any was done, which the Court acquiesced and acknowledged by reducing the fee of said Attorney. It is evident to me that your Honor, seeing incompetency and negligence on the part of my Attorney, H. Howard Friedman, reduced the fee by more than fifty percent (50%). This point will be elaborated further in reference to the cross-examination by Mr. Friedman of witnesses, especially that of Mr. Ramirez.

During the trial, the performance of said Attorney, H. Howard Friedman, can be described in terms of a continuous comment he kept repeating, both in my presence and in that of my wife, "I forgot." Said Attorney requested of me that I take diligent notes during direct and cross-examination of witnesses of which would later possibly to be used to aid in my defense. As inconsistencies were brought out by me, to the attention of Mr. Friedman, which I noted, he responded that they would be pursued by him since they were relevant and important to my defense and would be acted upon during the next session of Court. However, no action was taken because Mr. Friedman stated, "I forgot."

In United States v. Hack, 205 F (2d) 723, the defendant in this instance was represented by Counsel of his own choosing. After conviction, the defendant, in a motion for a new trial, alleged that his conviction was due to the lack of preparation for trial and incompetence of his Attorney. The Court affirmed the conviction and stated that the evidence against the defendant supported the verdict. In my predicament, Howard Friedman was appointed by this Honorable Court, leaving me as a defendant, no choice in the matter. While the defendant Hack had the right to select the Attorney, whom

he felt was competent, I was not given such an opportunity because of my financial circumstances. It was only after the trial, upon reviewing the transcript that said Attorney's competence could be judged in terms of the result of the trial conviction. In this respect, this claim that the Counsel of my choice was appointed, is a frivolous claim. It was only possible to discover incompetence at the end of the trial.

Inconsistencies of testimony by Government witnesses were never pursued in Court by said Attorney. In one instance, a government witness, upon cross-examination by Counsel proved that when another government witness committed perjury, the point was not pursued any further. In the indictment, 74 CR. 96 RO, count two alleged that Roger La Ferla "earned additional income of \$3,500.00 as a carpenter, which was contended to be a false statement. Upon direct examination by the Government, the witness was asked about his occupation, and he admitted that he was a carpenter. Transcript, page 374, lines 21-24 is as follows:

DIRECT EXAMINATION

BY MS. HYNES:

Q Mr. La Ferla, what do you do for a living?

A I am a carpenter.

Upon cross-examination by my Counsel, the witness was again questioned as to his occupation, transcript page 410, line 15 to page 411, line 15, as follows:

Q Going back to your grand jury testimony of August 14, 1972, page 8, Ms. Hynes, do you recall being asked about going to Mr. Nisnewitz' office in Queens and you were asked this question, "You went by yourself?

"A Myself and Robert Walther."

A Yes.

Q Do you remember that question and that answer?

A Yes.

Q Now you said you are a carpenter, are you not?

A. Yes.

Q Did you have knowledge of carpentry back in February of 1972?

A No. I just started as a carpenter recently.

Q Where are you employed now?

A By a man in East Northport, Tomack Road, private contractor.

Q And you are doing carpentry work there?

A Yes.

Q Who suggested that you put down on this application that you are a carpenter?

A Mr. Nisnewitz.

Q You didn't tell him you were a carpenter?

A No.

Q And that this was a side line?

A No.

The witness, upon questioning said that he did not tell me that he was a carpenter. He said that I, myself suggested it for the loan application. Now, this can be seen as nothing short of perjury on the part of the government witness. If he did not volunteer such information, how then could I have come to know it? There is no possible explanation except that of perjury.

Further, the government produced two witnesses, Mr. and Mrs. Walther, to substantiate the testimony of Mr. La Ferla. On page 442 of the Trial Transcript, starting at line 10 through line 16, as follows:

Q How long did you know him?

A I Don't know. About a year.

Q During the year that you knew Mr. La Ferla was

he working?

A. Off and on as a carpenter, most of the times off.

Q. But he was a carpenter, wasn't he?

A. That what he liked to do.

Mr. Walther was asked as to how long he knew Mr. La Ferla and he replied about one year. As to his occupation he said that he worked off and on as a carpenter and further stated "that what he liked to do." (line 16, page 442 of the Trial Transcript, as previously heretofore quoted.

With respect to the testimony by Mrs. Walther, trial transcript, page 453, line 6 to line 25, Mr. Friedman cross-examined the witness in terms of how long she knew Mr. La Ferla, as follows:

Q Was Mr. La Ferla working in 1972?

A No, he was not.

Q Was he a carpenter?

A He did carpentry work but he wasn't employed at the time.

Q How long do you know Mr. La Ferla?

A I have known Roger ten years.

Q You know that he is a carpenter?

A Yes.

Q And he was a carpenter in 1972, February?

A No, he wasn't working.

Q I understand that but he told us that he was employed as a carpenter then.

A No, I didn't say that. I said I know that he is a carpenter. But he wasn't employed at the time.

Q Do you know whether he know carpentry back in February of '72?

A Do I know if he was --

THE COURT: If he knew carpentry.

A Yes, he did. He took it in high school.

In this cross-examination, as above enumerated, Mr. Friedman cross-examined the witness in terms of how long, she knew Mr. La Ferla. She stated that he was a carpenter for ten years. Further, she was asked whether the witness, La Ferla, knew carpentry, back in 1972. She responded, "yes, he did. He took it in high school." In this instance, the testimony of Mrs. Walther, completely contradicts that of Mr. La Ferla. Mrs. Walther admitted, under oath, knowing Mr. La Ferla for ten (10) years and that he studied carpentry in high school.

On page 410, lines 15 to 25 and on page 411, lines 3 to 15, of the Trial Transcript, as hereto fore enumerated, Mr. La Ferla, while being cross-examined was asked if he knew carpentry back in February, 1972 and he responded, no, that he just started recently. As evident with the testimony of Mrs. Wrather, the witness lied. He had known carpentry for the past ten (10) years. "He took it in high school." (page 453, line 25 of the Trial Transcript.)

This point, brought out by Mr. Friedman was never pursued by by him with respect to the inconsistent testimony of the witness, Mr. La Ferla. He did not take any action to expose or point out these inconsistencies of which the second count of the indictment was based upon.

Upon cross-examination of the government witness, Rowe, my Attorney, H. Howard Friedman, made a serious error and/or blunder by questioning the witness on a statement which had not even been entered into evidence. Referring to pages 123 to 128 of the trial transcript, here to follow:

Q Mrs. Rowe, I have asked you to read the paragraphs on this page, May 2, 1972 statement that you have given to the FBI Agent Hackbart.

Does this refresh your recollection as to

what you told Mr. Hackbart on May 2nd, 1972 as to when you had a cold?

A I know I had it the second time I went to the bank.

Q Does this statement, Mrs. Rowe, state that you had a cold on the first time you went to the bank?

A No, I did not have a cold the first time.

Q I am not asking you whether or not you did. I am asking you whether this statement that you have signed on May 2nd, 1972 refreshes your recollection, or whether it does say that you had a cold the first time you went to the bank.

THE COURT: The question is objectionable in form. I will sustain the objection on the grounds of form.

Q Mrs. Rowe, you showed your Social Security card to the bank loan officer for the first time you went to--

A Yes.

Q May I ask you to read the end of the paragraph on the next page of the May 2nd, 1972 FBI report?

A Which page? The next page?

Q The very next page. It states "The Social Security card."

A Yes, it is about the Social Security card.

Q That was the card that you showed the Bank officer the first time you went?

A The first time I went, I showed him the Social Security card.

Q And that is in the same paragraph wherein you state that you had a cold?

A No, that was the--well, I don't know.

Q Yes or no?

A The first time I showed him the Social Security

card, because they needed it for the ID on the loan application.

Q I am asking you about the statement you made to FBI Agent Hackbart.

THE COURT: What are you asking Mr. Friedman?

Q Did you not state to Agent Hackbart that you had a cold at the time that you went to the bank for the first time and showed the loan officer your Social Security card?

A The first time I did not have a cold.

Q I am asking you whether the statement says that or not.

MS. HYNES: Objection.

THE COURT: Yes, I will sustain it.

Would you come to the side bar, please.

(At the side bar.)

THE COURT: It seems to me if it is your contention this is a contradictory paragraph, why don't you offer
paragraph in evidence?

MR. DRESCHER: He wanted to read it and he was stopped by objection.

MR. LAWYER: Because it is not in--

THE COURT: Even asking her what does the statement say, well the statement is--

MR. FRIEDMAN: She is obviously--

THE COURT: The statement is the best evidence.

MR. FRIEDMAN: She is obviously not asking me--

MR. LAWYER: You are obviously not asking the question properly.

THE COURT: If it is your contention that this paragraph you have been referring to is a contradiction of her testimony, I would allow you to

put that paragraph in evidence and argue such inferences as you feel are appropriate.

MR. LAWYER: But in the proper form. He can ask her--

THE COURT: I am only ruling on that narrow question to the witness. Questions to the witness I will rule upon as put.

MR. FRIEDMAN: Let's get this straight. If I put in this paragraph, am I offering the whole exhibit?

THE COURT: No, I don't think you are.

MR. FRIEDMAN: Is the government then permitted to put the balance of the statement in?

THE COURT: They would be permitted to put in anything that bears upon this paragraph.

MR. DRESCHER: To explain it away but nothing else?

THE COURT: Yes.

MR. DRESCHER: All right.

(In open court.)

MR. FRIEDMAN: If your Honor pleases, at this time the defendant will offer into evidence that portion of the May 2nd 1972 statement by Mrs. Rowe to the Federal Bureau of Investigation, starting with the paragraph: "When I went the second time, I couldn't go" on to the second paragraph.

MS. HYNES: I object to the reading at this time, your Honor.

THE COURT: In other words, beginning with the middle paragraph, which starts out "When I went" and going to the next two paragraphs?

MR. FRIEDMAN: Yes.

THE COURT: That paragraph and the following one?

MR. FRIEDMAN: That is correct, your Honor.

THE COURT: Ms. Hynes, do you have any objection to the introduction in evidence of those

two paragraphs?

MS. HYNES: I consent, your Honor.

THE COURT: All right, they may be received.

MS. HYNES: Can we read them at this point into the record?

MR. FRIEDMAN: May I read these paragraphs into evidence at this point?

THE COURT: You may. You may read them to the jury.

Mark the exhibit appropriately at this point.

(Defendant Nisnewitz Exhibit A marked and received in evidence.)

THE COURT: Let us please number the page that has been admitted and make appropriate notation on the face of the exhibit, the paragraphs that are included in my ruling.

MR. FRIEDMAN: This would be the third page.

THE CLERK: All of page 3?

MR. FRIEDMAN: No, beginning with "When I went the second time."

THE COURT: Mr. Friedman, you may read.

MR. FRIEDMAN: Thank you, your Honor.

"When I went the second time, the application was in an envelope. He told me to go to the First National Bank on Broadway near Canal or Centre Street. He told me to go to the bank and give it to anyone who takes loan applications. This I did. I went to one of the loantakers at the bank. The man I talked to asked me or asked how my cold was. I wondered how he knew I had a cold. The banker asked if I had any identification. I said I only had a Social Security card. I said that I had no other identification under my maiden name."

Q Did anyone at the bank ask you for any money?

A No.

In essence, my Attorney questioned the witness about the document even before entered into evidence and then it was asked by the Court as to what he was questioning the witness about. I refer also to Mr. Lawyer, the Assistant United States Attorney who made the statement regarding Mr. Friedman's question to the witness, "you are obviously not asking the question properly." (Transcript, page 125 lines 23 to 24). In fact, the Counsel for the government pointed out to my Attorney that he was not asking the question properly. This shows that in addition to the Court even the government recognized the inept ability of my Counsel as not being able to cross-examine a witness properly and pointed it out at the side-bar.

Again, while the government witness Rowe was being cross-examined by co-defendant's counsel, Henry Drescher, a controversy arose as to the existence of a money order. The witness could not establish where the money order was purchased. She could not identify the name of the issuing company of the money order. The witness did not have a receipt of the said money order. In fact, she could not tell who the recipient of the money order was. The government did not produce said money order as evidence and enter it into the record. During this cross-examination, Mr. Friedman made no objections on the part of these questions put by Mr. Drescher, which can be seen was prejudicial to my defense. Since the money order was never produced by the Government and since there was no evidence of its existence, the questioning in relation to a document, which in essence might have been a figment of the witnesses' imagination, hearsay, which could not be substantiated. Refer to the trial transcript, page 132, line 21, to page 134, line 6 as follows:

CROSS-EXAMINATION BY MR. DRESCHER:

Q Miss Frenclau, this \$50 money order, when did you buy it; when you got your money at the First National City Bank?

A Did I buy that money order at the First National City Bank?

Q Yes.

A. No, I did not buy it there. I got it in some office. I don't remember where. I think in a cash--in a check-cashing place. I'm not sure.

Q I don't understand ma'am. I didn't ask you where you cashed it. I asked you--

THE COURT: She said she thought she bought it in a check-cashing place.

Q Was it a Postal Money Order from the United States Post Office?

A I don't know. It was a money order. The money orders, you can buy them there.

It could be an American Express Money order--I don't know. A money order. I don't remember what--

Q To the best of your recollection, that was in a check-cashing place?

A I cannot tell you for sure where I bought it. It could have been in an apothecary, a drugstore or-I cannot remember.

Q In other words, then, I take it you haven't seen that money order in the possession of the FBI or the United States Attorney since you bought it, is that right?

A No, I didn't.

Q You haven't seen it since then?

A I did not.

Q What?

A No, I didn't see the money order.

When my Counsel cross-examined another government witness, Ramirez, the witness ~~was~~ questioned as to whether I was a member of Dare to Be Great. The witness said no at which point the Government objected and the Court sustained the said objection. Now the witness admits, That I was not associated with Dare to Be Great, the government objected to this point and the Court sustained it. It can only be out of sheer stupidity that my Attorney did not pursue this matter with the Court. The witness had a question put to him which he answered truthfully. The objection by the Government was out of order and since my Attorney, was not qualified as a good cross-examiner, did not pick up this error. Based on this incompetence of Mr. Friedman, it was wrongly established that I could have been a member of Dare to be Great, since the government's objection to the question put to the witness was sustained. In the trial transcript, page 163, line 24 to page 166, line 2, as cited below, it shows that upon questioning, the witness stated that I was an Accountant.

Q. Do you know whether Mr. Nisnewitz is in any way connected with Dare to Be Great?

A. At some meetings, I spoke to other people who were involved in the company.

Q. And they mentioned Mr. Nisnewitz?

A. Yes.

Q. But he was not mentioned as a principal, was he?

A. Excuse me?

Q. He was not a principal in Dare to Be Great?

A. No, he was not.

MS. HYNES: Objection, your Honor.

THE COURT: I will sustain the objection.

Q. Do you know the reason that the bank turned you down, the first bank, Kings Lafayette?

- A. I didn't qualify for a loan.
- Q. After being rejected, did you speak to the loan officer about it?
- A. No, I didn't. I didn't speak to him why I was declined.
- Q. Never asked him?
- A. Not that I recall, no.
- Q. On that application, did you put down your true age?
- A. Of course.
- Q. How old were you then?
- A. I am 23 right now.
- Q. How old were you in 1970? 20?
- A. I think so, yes, 20 years old.
- Q. Did you put down you were 20 years of age?
- A. Yes.
- Q. Did you put down how much money you were earning in Cadillac Motors?
- A. Everything was true in that statement.
- Q. Everything was true?
- A. Everything was true in that statement.
- Q. I believe you testified that after you got Mr. Nisnewitz' name from this Dave, you telephoned him for an appointment?
- A. Right.
- Q. During this telephone conversation, I believe it was your testimony that you told him you wanted the loan, and he said it would cost you \$150?
- A. Exactly.
- Q. This is what happened on the telephone?
- A. On the telephone call the first time we spoke.
- Q. Had you ever spoken to Mr. Nisnewitz before?
- A. No.
- Q. You knew Mr. Nisnewitz was an accountant, didn't you?
- A. From what I was told by other people from the corporation, yes, he was.

Further, while again cross-examining government witness Ramirez, my Attorney, H. Howard Friedman incorrectly used a government exhibit submitted in evidence which in effect was detrimental to my defense. Mr. Friedman told the witness to refer to a particular exhibit and page number. Counsel for the co-defendant, Mr. H. Drescher made a correction as to which exhibit was being referred to. Mr. Friedman continued to question the witness about the statement when the witness responded to what he was being questioned about and mentioned the name of another banker (Ramos) not Westphal, which Mr. Friedman was questioning the witness about. Refer to the following page of the trial transcript, page 183, line 14 to page 185, line 2 as enumerated as follows:

Q. I refer you to the fifth page of the April 7th statement to the FBI, marked as Defendant Nisnewitz Exhibit A.

MR. DRESCHER: Wasn't that B for identification?

THE COURT: It is B for identification.

MR. FRIEDMAN: I'm sorry. B.

MS. HYNES: What page?

MR. FRIEDMAN: I think it is the fifth page.

Q. I ask you to look at the paragraph starting "I called Nisnewitz and told him"--

A. Yes, I read the paragraph.

Q. Does that refresh your recollection whether you called Mr. Westphal back?

A. No, you got the wrong story. here. This is about Mr. Ramos. This is in reference to-

THE COURT: You must have the wrong page.

A. I got page 5.

Q. Page 5, the paragraph starting "I called Mr. Nisnewitz"--

THE COURT: Hold on, Mr. Friedman.

I think he wants you to address yourself to that paragraph (indicating).

A. Yes, I guess that's true, that did happen. I did

call back.

Q. You had to call Mr. Westphal back in a couple of days, is that correct?

A. When I called him the first time, He told me my loan was declined.

Q. Then you spoke to Mr. Nisnewitz and Mr. Nisnewitz asked you to call Mr. Westphal, and you called him back, and Mr. Westphal told you to call him again in two days?

A. Exactly.

Q. And when you called Mr. Westphal back, he told you that he would give you the loan if you would give him a co-signer?

A. Exactly right. Now it is coming to me. I told him no, that I did not want to get no other people involved in my business.

This instance of the cross-examination shows how unprepared my Counsel, Mr. Friedman was during the trial proceedings. Mr. Friedman did not know what was contained in the evidence submitted by the government. It went as far as a government witness-Ramirez, under cross-examination, by Mr. Friedman bringing up information that the statement to which Mr. Friedman asked him to refer to did not concern the banker which Mr. Friedman was questioning the witness about. This line showed that Mr. Friedman, because of his incompetency, brought into the records, a line of testimony which ultimately became prejudicial and detrimental to me as it may have established the conspiracy alleged in the indictment between myself and the banker, Ramos, who had previously plead guilty and testified for the government.

Previously, in this affidavit, I mentioned in reference

to the voucher, submitted Mr. Friedman, his lack of preparation before and during my trial before this Honorable Court. I am cognizant now that the Court saw through this incompetency and reduced his fee because of lack of preparation.

When my Attorney, Mr. Friedman cross-examined Mr. Ramirez, he lead the witness into testimony as to a W-2 form which he says was forged by myself. The W-2 form was brought up by the witness, improperly answering a question put to him by Mr. Friedman. My Attorney, did not restrain the witness for instituting into the record matters which he was not asked of and ultimately was used against me by the government. In fact, the witness used a term, "forged" which added insult to injury. In effect, my Counsel in questioning the witness in a manner which is akin to prosecuting me instead of defending me. In substance, as seen from the trial transcript, on page 195, line 4 to page 195, line 23, my Attorney is helping the government to obtain my conviction, as follows:

Q. He told you to give Mr. Ramos the second application?

A. Right. He also gave me a form.

Q. We will get to that. The W-2 form.

A. Right, the W-2 form.

Q. When you got to Mr. Nisnewitz' office, where was this application?

A. Where was it? It was--he was folding it and putting it into the envelope.

Q. And you saw him seal the envelope?

A. Yes.

Q. Was anything written on the envelope?

A. Mr. Ramos, First National City Bank.

Q. Did you not see this application?

A. No, I did not see the application.

Q. I believe you testified that at that time Mr.. Nisnewitz was typing up a W-2 form?

A. Right.

Q. Did you see the W-2 form?

A. That's when I realized that it was forged.

My question, relevant to this point is, whose side was my eloquent attorney on? I would naturally assume he would be on my side. In effect, what happened in the pursuance of my defense, he hurt me more than helped me.

Again, with respect to my adept Attorney and his lack of knowledge of cross-examination of the government witness, Ramirez, on page 199, line 6 of the trial transcript, to page 200, line 6, while cross-examining said witness he made a derogatory statement which my Attorney should not have allowed to continue. Especially with respect to an answer on line 14 to 15, page 199., as follows: "That's when I looked it over clearly and that's when I noticed there was alot of false statements in it."

Trial Transcript-Page 199, line 6 to Page, 200
Line 6.

Q. When you went to the bank--This First National City Bank with this second application, you had a conversation with Mr. Ramos?

A. Right.

Q. And Mr. Ramos let you see the application?

A. Exactly.

Q. This was the first time that you saw any application?

A. That's when I looked it over clearly and that's when I noticed there was alot of false statements in it.

Q. While you looked it over, did you fill in any parts of the application such as the purpose of the loan?

A. Yes, I did.

Q. Did you put down your previous address as 60
Gouverneur Street, New York City?

A. Yes, I did.

Q. Did you put in your supervisor's name as Mr. Skennion?

A. Yes, I did.

Q. These were all put in there in your handwriting?

A. Yes, I did.

Q. And then you signed this application?

A. Yes, I did.

Q. Knowing that the information was false?

A. Right. Exactly.

This again substantiates my belief and contention that Mr. Friedman did more to aid in my prosecution than in my defense. He allowed a derogatory statement into the record without nullifying it. This shows that a competent cross-examiner of witnesses would not promulgate a conviction as he did.

Finally, as if the aforementioned mistakes were not detrimental enough to my defense to show that my Attorney, H. Howard Friedman was so incompetent, on page 242, line 5 of the trial transcript, to page 245, line 18, the learned Judge could not understand the significance of the cross-examination of the rambling government witness, Rodriguez and asked the Attorneys to the side bar. The transcript is as follows:

Q. You testified at that time, Mr. Rodriguez, that you went to a few meetings and it was always the same thing, the same faces.

A. That's right.

Q. Were any of those faces Mr. Nisnewitz' face?

A. No.

Q. Then you told the grand jury that "this guy, the one who told me, Benjamin Martinez"?

A. I didn't know his last name.

Q. Martinez is the words you used. You did not know his last name?

A. Well, I didn't remember it now.

Q. Did you know Mr. Martinez well?

A. No.

Q. You told the grand jury that Mr. Martinez wanted you to go into a distributorship with him?

A. No. I mean Benny--one day I was going to the store, the grocery store, and he stopped me in the street, and he told me about, you know, how would I like to make a lot of money.

So I asked him, you know, "What is it that I have to do?"

He says, "You got to sell."

So I says, "Sell what?"

He says, "Well, I can't tell you that. You have to come to a meeting."

So I asked him, well, you know, "what is it? What's this meeting all about?"

He says, "We;;, I can't tell you because if I tell you, it may turn you off and you may not want to come."

So I asked him, you know, "What is it I have to sell, drugs?"

He said, "No, it is not like that."

And he said--I said, "Well, you know"--again, I kept asking him, trying to insist on him telling me what type of meeting this is, and he says, "Listen, just come to the meeting, it is the opportunity of your lifetime. Once you get involved in what I am going to present to you, you are going to be rich. You will make it, and you are definitely going to get places. You are not going to even worry about welfare."

And I says, "okay, I am going to go."

So that night they picked me up and he came with a guy named Filande, and I went to that meeting on 57th Street.

THE COURT: Just a minute. Let me stop you. Would you gentlemen and ladies please come to the side bar?

(At the side bar.)

THE COURT: I want to make this observation.

This witness is rambling on in a conversation with all sorts of people, in a completely unresponsive answer to a question of yours, Mr. Friedman. You have made no request of me to cut him off.

MR. FRIEDMAN: No, sir.

THE COURT: And you Mr. Drescher, have made no request of me to cut him off, nor has the government, and if I don't hear a request of that kind, I am not going to do it.

MR. DRESCHER: I understand your Honor's position.

THE COURT: But it seems to me that all counsel here is leaving open the possibility of all kinds of mischief coming into this record in this conversation, and I don't want anybody to feel that I am supposed to be the one here to tolerate this in the absence of anybody saying anything to me.

MR. LAWYER: The government will protect its own record when it feels necessary.

THE COURT: I just want to make it perfectly clear to you gentlemen that I feel the

witness is on a frolic of his own on an unresponsive answer. I will look to you to ask for a ruling. Otherwise, I am not going to do anything.

MR. DRESCHER: I don't know him and I won't even question him. If anybody asks me, I love him.

THE COURT: All I can say is that this is the kind of conversation that I can see could.

MR. DRESCHER: It will end up nowhere.

THE COURT: It could open a lot of doors and it could also end up nowhere.

MR. FRIEDMAN: I think it will end up nowhere.

THE COURT: I just want to make it perfectly clear that I am looking to you to turn it off if you do not desire it.

As can be seen from the aforementioned excerpt from the trial transcript, it is my contention that what ensued was practically an education by the Court intended for the edification of Mr. Friedman, as to the effects of this cross-examination of the witness on his client's future defense. As the Court said, "it could open a lot of doors and it could also end up nowhere." (page 245, lines 13 to 14). The Court, was inferring that the continued rambling of this witness, under the so-called cross-examination of my Attorney, would bring about a dangerous and detrimental outcome to my defense. The witness, in rambling on and on, mentions drugs, does not seem to know what he is saying, indirectly admitting to being on welfare, etc. He is allowed to continue, as Mr. Friedman says, regarding the possible outcome from this testimony, "I think it will end up nowhere." (Transcript, page 245, line 15)

The bad feature of this cross-examination by Mr. Friedman of Mr. Rodriguez is that the jury heard the ramblings of this witness and as the Court inferred it could lead to "mischief." To speculate, the jury, upon hearing these remarks, could deduce that I was involved in unrelated matters by the manner in which Counsel was conducting his cross-examination by allowing the witness to continue to make such prejudicial statements. This part of this cross-examination illustrates beyond any reasonable, possible doubt, how my Counsel could not cross-examine witnesses and in fact his cross-examination lead the witness to enter into the records that were detrimental to my defense. Most of all, into the minds of jurors statements which were just nothing, became very prejudicial and I contend, a decent lawyer would never let himself be a part of such a catastrophe. The court so recognized this and went as far as to look to Mr. Friedman and more than suggested to do something, stop the witness "to turn it off."

Before the trial commenced, Mr. Friedman said he would engage a private investigator to get all the facts in the case necessary to the proving of my innocence. This investigator was never hired. Further, of extreme importance was that of said Attorney, H. Howard Friedman not objecting or taking any action as to a statement made by the co-defendant's Counsel, Henry A. Drescher. In his summation to the jury, Mr. Drescher said the following, which appears on page 786 of the trial transcript, lines 9 to 21 as follows:

Mr. Drescher; If your Honor please, my friends
at the government's table, Mr.
Friedman, Madam Foreman, ladies and
gentlemen of this jury:
I may start off this way, in full
sincerity, that this is the darndest

case I have ever seen as far as it is a travesty as far as confusion,, discrepancies, and contradictions, of all the witnesses. Apparently the only one who told the truth in this case was Mr. Ramos; when he took the stand and swore that he lied previously. That I assume wa the truth. Otherwise, you are going to have great trouble in deciding what the facts were in this case and I am going to discuss them with you at length later on.

In effect, being a witness, I was called by the co-defendant's Counsel a liar for the purpose of taking any possibility that Mr. La Morte, the co-defendant committed any criminal acts out of the minds of the jurors. Since Mr. La Morte did not testify, this strategy could be used to discredit my testimony and credibility.

When the government rested its case, my Attorney, deemed it necessary for me to testify ~~an~~ my own behalf. He asked me to meet him the following morning at his office, to discuss my testimony. When asked about how I should testify, he responded "Well,,you are not paying me Mr. Nisnewitz and therefore it is up to you as to how to testify."

After my conviction, Mr. Friedman instructed me to report to th~~e~~ United States Probation Department for a pre-sentence investigation. The United States Probation Officer, Joseph Kahn, instructed me to get letters of recommendation and references from my clients and personal friends and members of the community on the pretext that, I was seeking a new, large client.

Additionally, Mr. Kahn requested of me A statement,

needed for the pre-sentence report of my involvement in the case and feelings as to my innocence or guilt. Since I did not know what to write, I suggested that I ask Mr. Friedman for his assistance as to how to compose said statement and he concurred. This statement, Exhibit "C," prepared and dictated to me by Mr. Friedman, in effect admits my guilt and then pleads ignorance of the law. Since at that time, I did not feel one way or another about his competence or incompetence and since he was representing me, I followed his instructions to the letter and wrote the statement in my own hand as he dictated it to me.

As to the statement itself, it should never have been written according to Mr. Brodsky, who later represented me at the sentencing before your Honorable Court.

Upon sentencing, the Court used this statement as a basis for my incarceration. By the use of the statement and letters, the Court could justify its actions. My Attorney, knowing that I was going to Appeal, should have contested the pre-sentence report by the Probation Department, especially as to the letters given them.

Mr. David Brodsky, esquire, of the firm of Guggenheimer and Untermyer was appointed to represent me after quite a few communications with your Honor and Judges Lasker and Gurfein who were assigned to try two other indictments which were of the same nature. Judge Gurfein, upon receiving my letter, enclosed hereto, Exhibit "D", assigned Mr. David Brodsky of Guggenheimer and Untermyer as my Attorney and in which you, your Honor concurred, but Judge Lasker refused to appoint new Counsel, Exhibit "E". As evident in his letter, attached hereto, he expressed substantial confidence in the manner in which Mr. Friedman would defend me. However, Judge Lasker finally acceded to my request and dismissed Mr.

Friedman. As evident by this dismissal, Judge Lasker, who expressed confidence in Mr. Friedman, still dismissed him. If his honor felt that Mr. Friedman would represent me in a competent manner, why then did he finally acquiesce to my request for dismissal of Mr. Friedman, based upon my feelings of incompetency as states in his chambers before the second trial commenced, and in my letters to him, as per attached hereto, Exhibit "F".

There were other ramifications which showed continued incompetence of Counsel, Mr. Friedman. He never requested of me, any information as to my health which, if inferior, would have been transmitted, for the pre-sentence report. It was only after the dismissal of Mr. Friedman as Counsel, did Mr. Brodsky attempt to rectify this situation, copies of which are attached hereto. Unfortunately, your Honor felt that it was too late in forthcoming, Exhibit "G".

Mr. Brodsky attempted to correct my lack of competent Counsel by suggesting I obtain new letters attesting to my continued good standing in the community even though said people of the community knew about my possible incarceration. Mr. Brodsky in his notice of motion for a reduction of my sentence, stated in his affidavit, "these letters would have been submitted to your Honor at the time of original sentencing if the defendant had been properly advised by his original Attorney and the Probation Officer."

The most outstanding error that my Attorney made was not to claim "improper venue." Since the second case, tried before Judge Lasker was dismissed because of "improper venue" and since all three indictments were of the same nature, this could have been a good and substantial defense for the dismissal of the case before your Honor.

It is my contention that your Honor would have dismissed the indictment had my incompetent Counsel, H. Howard Friedman made this motion when the Government rested its case. It is on this basis that I ask for a new trial as it is my belief that an acquittal in all probability would have been granted had the motion been made by a competent attorney.

Upon appeal to the United States Court of Appeals for the Second Circuit, the judgment was affirmed. The government's case rested on the fact that Counsel for the defense waived the right to challenge venue since it was silent on this matter, when the government rested its case. *United States v. Price*, 47 F. 2d 23, 27 (2d Cir. 1971).

As the aforementioned inconsistencies, mistakes, incompetencies, blunders, errors and out right lack of judgment indicate, my Counsel was completely and thoroughly "inept." He did not make a motion for venue which is routine when the government rested its case. But in hindsight, upon scrutinization of the trial record, there is nothing that he did correctly.

Summary and Conclusions

As to previous descriptions mentioned by myself indicate, my representation by Mr. Friedman was nothing short of aiding and abetting the Government in obtaining my conviction. The cross-examination of Rowe, Ramirez, Rodriguez and finally the comment made by co-counsel Henry Drescher on behalf of his client, La Morte, in his summation to the jury indirectly attacking my credibility, unequivocally, undoubtedly, beyond any possible, reasonable doubt, show the incompetence of my Court appointed Counsel, Mr. Friedman who did not challenge this point.

It is based upon the aforementioned, that I pray that this Court, in the interests of the true administration of justice, grant my motion for a new trial so as to correct a terrible wrong (injustice) which was perpetrated due to the misrepresentation of my Counsel, and will cause in the very near future the revocation of my License to Practise Public Accounting in the State of New York.

Harold Nisnewitz
Harold Nisnewitz

Sworn to before me this 4th

day of November, 1976.

JULIO GALLARDO
NOTARY PUBLIC, State of New York
No. 41-4600769
Qualified in Queens County
March 30, 1978

Julio Gallardo
Notary Public

046 A

37501

U.S. DIST. CT. OF N.Y.
AT
NEW YORK CITY

PROCEEDING (describe briefly)
TRIAL

CHARGE/OFFENSE (describe if applicable & check box -)
18 USC 101412
U.S. or other code citation ▶

PERSON REPRESENTED (Show full name & status, & check box -)
HAROLD NISNEWITZ
Name already appears as ☐ PI or as ☐ Of above

☒ Felony
☐ Misdemeanor

1 ☒ Defendant - Adult
2 ☐ Defendant - Juvenile
3 ☐ Appellant
4 ☐ Probation Violator
5 ☐ Parole Violator
6 ☐ Habeas Petitioner
7 ☐ 2255 Petitioner
8 ☐ Material Witness
9 ☐ Other (Specify, item -)

DOCKET NUMBERS
Magistrate
District Court
74 Cr. 95
Court of Appeals

VOUCHER NUMBER
67715

COURT ORDER

☒ APPOINTING COUNSEL
☐ SATISFYING PRIOR SERVICE
☐ EXTENDING APPOINTMENT FOR APPEAL
☐ SUBSTITUTING COUNSEL FOR:
(name of prior counsel) (date app'd.)

Because the above named "person represented" has testified under oath or has otherwise satisfied this court that he or she: (1) is financially unable to employ counsel, and (2) does not wish to waive counsel, and because the interests of justice so require, the attorney or organization named below

Is hereby appointed to represent this person in the above designated case.

If appointment is made by a magistrate and the case subsequently proceeds to U.S. District Court, the appointment shall remain in effect until terminated or a substitute attorney is appointed.

The attorney or organization herein appointed is authorized to claim reimbursement on this form, subject to applicable law, administrative regulations, and the plan of the court.

Signature of U.S. Judge or magistrate
Date

CERTIFICATION OF ATTORNEY/PAYEE
Has compensation and/or reimbursement for work in this case been previously applied for or received? ☐ Yes ☒ No
If "Yes", how much were you paid? \$
By whom were you paid?
If this is an appeal did you represent person in lower court? ☐ Yes ☒ No

SIGNATURE OF ATTORNEY/PAYEE
I swear & affirm the truth & correctness of above statements

APPROVED FOR PAYMENT
SIGNATURE OF JUDGE/MAGISTRATE
SIGNATURE OF CHIEF JUDGE COURT OF APPEALS

COUNSEL
☒ IS A PRIVATE ATTORNEY
IS FURNISHED BY:
☐ COMMUNITY DEFENDER ORGANIZATION
☐ BAR ASSOCIATION OR LEGAL AID AGENCY

PHONE NO.
212-NY 5-3646
Soc. Sec. # 054-22-7236

ATTORNEY ORGANIZATION
H. HOWARD FRIEDMAN
295 Madison Ave.
New York, N.Y.
ADDRESS
ZIP CODE **10017**

VOUCHER NUMBER

AT TIME OF APPOINTMENT PLEASE TYPE OR PRINT CLEARLY THE NAME OF ATTORNEY OR ORGANIZATION (PAYEE) AND THE ADDRESS TO WHICH CHECK SHOULD BE MAILED

Copy 2 - Retained in court's files

H. Howard Friedman
Counselor at Law

295 Madison Avenue - New York, New York 10017

212 685-3646-7

March 19, 1974

Mr. Harold Nisnewitz
160-20 95th Street
Howard Beach, New York 11414

Re: U.S.A. v. Nisnewitz

Dear Mr. Nisnewitz:

I would appreciate you telephoning my office to arrange a mutually convenient time for us to meet and discuss your cases.

Kindly bring with you any files, memorandum, etc. you may have regarding your business transactions with the following:

Judith Brady
Timothy Buckley
Robert Ballantine
Vincent Chanice
Natalie V. Prenelau
Roger LaFerla
Gustavo Ramirez
Johnny A. Rodriguez
Jose Ramos, Jr.
Thomas La Monte.

Thank you for your cooperation.

Cordially,

H. Howard Friedman
H. HOWARD FRIEDMAN

HHF:SW

"B"

048A

H. Howard Friedman
Counselor at Law

295 Madison Avenue - New York, New York 10017

212 685-3646-7

March 26, 1974

Mr. Harold Nisnewitz
160-20 95th Street
Howard Beach
Queens, New York

Re : U.S.A. v. Nisnewitz

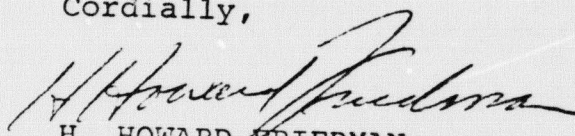
Dear Mr. Nisnewitz:

Please be advised that your trial scheduled for April 29, 1974 has been set.

It would be helpful if you would contact me in order that we can properly prepare.

Thank you for your cooperation and courtesy.

Cordially,


H. HOWARD FRIEDMAN

HHF:SW

"B"

UNITED STATES PROBATION OFFICE
Southern District of New York

049A

I, Harold Kisenintz May 18 19 74
freely and voluntarily make the
following statement to JOSEPH KAHN who has identified
himself to me as a U.S. Probation Officer. I have been told that anything I say
may be reported to the Court or Parole authorities. I have not been threatened
nor have any promises been made to me to induce me to make this statement.

In summer of 1971 Frank Arzo rented a room
in my suite. He was a distributor for Dave to Be Great.
He attempted to persuade me to invest in the venture
and to persuade my clients to invest which I could
not do as I did not feel the program was good.
Beginning in October or November, 1971 Frank Arzo &
Louis Mendes began sending people to my office to
obtain bank loans in order to participate in Dave to
Be Great or Kosco. When the people came to my office,
I took a retainer of \$100⁰⁰ to \$150⁰⁰ for the service I was
to perform for them which included future tax returns
and accounting services if they were successful in
obtaining the necessary funds to purchase a franchise.
I initially sent each of the applicants to Mrs. Hanover
Trust & informed them to see a Mr. Westphal who was
the loan officer. I had met Mr. Westphal through clients
of mine who were depositaries at his bank. If the applications
were denied by Mr. Westphal, I sent said applicants to Mr.
(over)

I have read the above statement or had it read to me and it is true.

Witnessed:

Mr. Ramos at First National City Bank. On some of these applications the information the applicants had given me concerning the purpose of the loan, his employment & income was incorrect. Of course what I have done was wrong but I truthfully had no knowledge that the making of an incorrect bank application was a violation of the law. But, whether I knew that I had committed a crime is unimportant because what I have done was contrary to the way in which I conducted my practice during the past twenty-five years, it was contrary to the ethics I demanded of myself & of my family & I am deeply embarrassed that I became so foolishly involved.

200

Harold Wisnewitz

Public Accountant



835-6618

June 14, 1974

United States District Court
Southern District of New York
Foley Square
New York, N.Y.

Dear Judge Owen: Judge M. Lasker, Judge Gerfein

I am addressing this letter to you seeking advice and guidance in respect to my present predicament. I am forty-eight years of age, married, the father of two teen-age children and a New York State Licensed Public Accountant, having practised my profession honorably for the past twenty-six years in New York. I have never been arrested prior to my present predicament.

I very foolishly prepared, at the request of two or three disreputable characters whose reputation was unknown to me, applications for loans made to various banking institutions for the purposes of obtaining loans to be used in purchasing franchises in the businesses of these nefarious characters. As a result of same I was indicted in three separate indictments together with these nefarious characters in the Federal Court of the Southern District of New York. I never benefitted from my actions in any respect except to be compensated for my accounting advice in preparing the applications and for future advisement and accounting work for these individuals that were referred to me by the nefarious characters. Such future work being their personal income tax returns and the setting up of bookkeeping books and records.

I presently find myself in the following predicament. I was tried before Judge Owen, and the jury on an indictment which included two of the nefarious characters. Because of my financial situation I was obliged to request assigned Counsel and Howard Friedman, esquire, was assigned to me and represented me. The result of my trial was, one nefarious character pleaded guilty (with the possible promise of leniency) and testified for the Government. The other nefarious character was acquitted by the jury and I was the only one convicted.

I now face two additional indictments, one before Judge M. Lasker and the other before Judge Gerfein in each of which indictments I am a defendant together with three of the nefarious characters. From my meager knowledge of the law during my recent trial, I always felt that my assigned Attorney did not competently represent me. In preparation for the trial of my two outstanding indictments, I have attempted to ascertain from my counsel whether any of the nefarious characters who have been indicted with me have arranged to plead guilty and obtain leniency for themselves by testifying against me as has happened at the first trial. I cannot get any direct responses and feel that is due to the incompetency of my assigned counsel.

"p"

I have made a complete and thorough statement to the United States Probation Officer, Mr. Kahn, in regard to my recent conviction and am ready to admit my full implication in all the transactions involved. I am fearful in that the same result will follow, namely, that the nefarious characters, who benefitted from these transactions will be exonerated and I will be the one convicted although I was not the one who benefitted from the alleged illegal transactions. I am therefore respectfully requesting that the Honorable Court assign new Counsel to me so that I can feel that I am competently represented and whose legal advice I will follow in regard to my presently outstanding two indictments.

I am ready to make full disclosure to any authority and cooperate with them so that a full and equitable disclosure can be accomplished and the really guilty parties (those who benefitted from same) can be brought before the board of justice. I am therefore humbly requesting that new Counsel be assigned to me so that I can be competently advised in regard to what action I should take in regard to the two outstanding indictments against me.

Thanking you for any consideration you may show me, I am

Sincerely yours,

Harold Misnewitz

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
UNITED STATES COURT HOUSE
NEW YORK, N. Y. 10007

053A

CHAMBERS OF
JUDGE MORRIS E. LASKER

June 17th, 1974

Harold Nisnewitz, Esq.
160-20 95th Street
Howard Beach, New York 11414

Dear Mr. Nisnewitz:

I have your letter of June 14th, in which you request an assignment of new counsel to defend you. There is nothing in your letter which leads me to believe that there is any reason why I should assign new counsel.

On the other hand, I have substantial confidence in the competence of Mr. Friedman and in his desire to defend you fully. I have observed him in other cases which have been tried before me and believe him to be vigorous in the defense of his clients. I do not agree that he is incompetent in any way.

Under the circumstances, I regret that I must deny your application to appoint new counsel in regard to the case pending before me.

Very truly yours,

Walter J. Cohen

MEL/cw

cc: H. Howard Friedman, Esq.
Patricia M. Hynes, Esq.

"E"

Harold Nisnewitz
Public Accountant



835-6618

June 27, 1974

United States District Court
Southern District
Foley Square
New York, N.Y.

Dear Judge Lasker:

Today, by telephone, Mr. David Brodsky, esquire, who has been appointed to represent me before Judge Owen and Judge Gerfein has notified me of your continued desire not to release Mr. Friedman as my attorney.

As I previously have written you, the attorney, Mr. H. Friedman and I have had disagreements during and after the presentation of my defense before Judge Owen and I respectfully request the assignment of other Counsel.

Judge Owen and Judge Gerfein have assigned Mr. David Brodsky of the firm of Guggenheimer and Untermeyer as my attorney before them and I have found that I have confidence in that he will represent me advantageously and to the best of his ability, and also there is a feeling of compatibility between us, whereas with Mr. Friedman I was and continued to be in conflict with him, therefore I respectfully request that you Sir, respectfully permit Mr. David Brodsky to act as my Attorney.

Please be advised that Mr. Friedman up to the present time has not availed himself to me for the preparation of this trial before your honorable court.

Thanking you in advance for your courtesy and cooperation in this matter, I am.

Very respectfully yours

Harold Nisnewitz

C.C.

Mr. Friedman
Miss P. Hynes
Mr. D. Brodsky

"F"

160-20 95th STREET, HOWARD BEACH, N.Y. 11414

Burton Nemeth
Chiropractor
1223 Avenue J
Brooklyn, N.Y. 11230
—
Esplanade 7-4343

July 10, 1974

TO WHOM IT MAY CONCERN:

Please be advised that Mr. Harold Nisnewitz was a patient at this office from 4/16/64 until 4/5/73. Mr. Nisnewitz presented the following case history when he first visited this office.

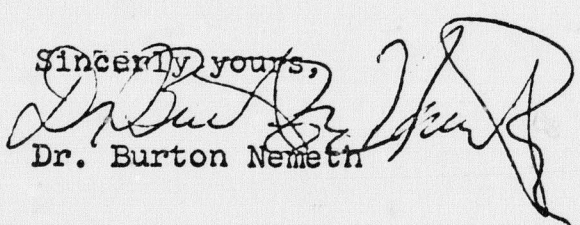
Entrance Case History: He had just returned from the Mayo Clinic where his condition was diagnosed as a "mechanical low back". All treatment which was recommended failed to produce the desired results and the patient continued to suffer with severe pain which radiated from the small of the back into the calves. The pain was so exquisite that Mr. Nisnewitz often fainted and usually required shots of morphine. At the time of his initial visit the patient fainted in the waiting room because he sat for too long a period of time. The pain was aggravated by sitting, walking stairs and it was also intensified by heat treatment. The patient was advised to wear a belt.

Treatment started on 4/19/64. The patient appeared to respond well to treatment which was directed to nerve and muscle balancing. Adjustments, traction, low voltage muscle stimulation, noctuous terminal point technic and rest were employed. Recovery was never complete though improvement was noted. Morphine was replaced by terminal point technics during acute attacks which brought speedy relief. However, it is my opinion that Mr. Nisnewitz never enjoyed a complete recovery because of repeated injuries he sustained as well as stress from occupational stress and emotional strain.

As reported above I last attended Mr. Nisnewitz on 4/5/73

BN/g1

Sincerely yours,


Dr. Burton Nemeth

QUEENS HOSPITAL CENTER

056A

164 STREET • JAMAICA • NEW YORK 11432
QUEENS GENERAL HOSPITAL • TRIBORO HOSPITAL

Affiliated with

LONG ISLAND JEWISH - HILLSIDE MEDICAL CENTER
CATHOLIC MEDICAL CENTER
HEALTH SCIENCES CENTER / S.U.N.Y. STONY BROOK

January 13, 1975

Mr. David Brodsky
Attorney-at-Law
80 Pine St.
New York, N. Y. 10005

Re: Harold Nisnewitz - D/B: 1/11/26
160-20 - 95 St., Howard Beach, N.Y.

Dear Sir:

I am writing to you at the request of Mr. Harold Nisnewitz, who has been seen in the Adult Psychiatric Clinic of this hospital since Nov. 27, 1974 because of severe depression, crying spells, and insomnia. The patient stated that he became depressed in June, 1974 when he heard the verdict about his court case.

Mental Status: Patient is a 48 year old, married, white male, who is slightly obese and short of stature. He is neatly dressed. He is well oriented; his affect is appropriate, mood severely depressed. He cries during the interview. His speech is mostly spontaneous, coherent and relevant. He denies any auditory or visual hallucinations. No overt delusions of persecution are noted. He speaks about his fear of going to jail. He feels helpless and hopeless and rejected by his family and friends. Judgment and memory are good.

Diagnosis: Depressive Neurosis (Reactive Depression).

The patient is being treated with psychotherapy and chemotherapy, and has been seen on two occasions following his evaluation on Nov. 27, 1974. So far no marked improvement in his symptomatology has been noted because the contributing factors remain the same.

Sincerely yours,
Paula I. Teitelbaum M.D.
Paula I. Teitelbaum, M. D.
Adult Psychiatric Clinic

PIT:AR

"G"

GURSTON D. GOLDIN, M. D.

166 EAST 63RD STREET

NEW YORK, N. Y. 10021

TEMPLETON 8-7223

057A

January 28, 1975

David M. Brodsky, Esq.
Guggenheimer & Untermyer
80 Pine Street
New York, N.Y. 10005

Dear Mr. Brodsky:

Pursuant to the court order 74 Cr. 96 of United States District Judge Richard Owen, I conducted a psychiatric examination of Mr. Harold Nisnewitz on October 8 and November 5, 1974 for the purpose of evaluating his emotional and mental status.

The salient clinical finding on psychiatric examination was an acute emotional disturbance for which Mr. Nisnewitz was in need of immediate psychiatric treatment. He was suffering from a depressive reaction associated with painful feelings of guilt, shame, inadequacy and unworthiness which had been intensified by his recent conviction in court. He has a non-psychotic characterological disorder that can be described as a paranoid character trait and has had a tendency to experience himself as a maltreated, misunderstood and helpless man who is too weak and vulnerable to prevent the abuse he feels he has unfairly had to endure. His recent legal experience has revived his long-standing unacceptable feelings of shame and inadequacy, lowered his self-esteem and confirmed his feelings of being the victim of maltreatment and exploitation. This self-image and sense of self in relation to others is not accompanied by any structured paranoid delusional system and there were no findings on clinical examination or by history of psychological disorganization or gross impairment of reality-testing.

Mr. Nisnewitz is an angry, suspicious and distrusting man who was struggling with an intense resentment and rage at authority figures whom he perceived as hostile and punitive. His suicidal threats represent essentially an expression of rage by a man who experiences himself as helpless and defenseless and has resorted to this infantile manipulative gesture to "punish" those who have inflicted pain on him by seeking to make them suffer feelings of guilt and sorrow.

Mr. Nisnewitz was experiencing intense feelings of guilt and anxiety with regard to the members of his family whom he felt would suffer as the result of the "harsh" sentence which he reported he had received. This concern had intensified his feelings of low self-esteem and contributed significantly to his clinical depression.

I advised him to seek psychiatric help for his acute affective disturbance and recommended several clinical facilities to which he might apply.

Sincerely yours,

Gurston D. Goldin
Gurston D. Goldin, M.D.

74 CR 96 RO

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-Against-

HAROLD NISNEWITZ,

Defendant.

NOTICE OF MOTION

- AND AFFIDAVIT

HAROLD NISNEWITZ

83-11 139th Street,

Kew Gardens, N.Y. 11435

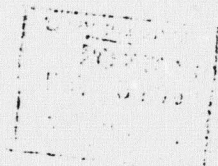
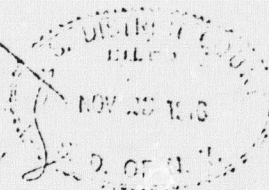
(212) 847-1098

MEMORANDUM

The requested demonstration of incompetency is far from established. Further, this ground of attack, even if it ever existed, should have been apparent to defendant in the period between trial and appeal. Defendant having unsuccessfully appealed and denied his sentence the application is untimely. The motion is denied. So ordered.

11/18/76

R. J. [Signature]
USDC



mpb:mg

Rowe-cross

123

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2 had a cold. I know it because, you see, when Tito in-
3 formed me that my loan was ready, I couldn't go to pick
4 it up, I was sick. I was at home sick.
5

6 The 31st I picked it up and that was the second
7 time I went to the bank, and that's when I had a cold,
8 and I just had gotten over it a little bit.

9 Q Mrs. Rowe, I have asked you to read the paragraphs
10 on this page, May 2, 1972 statement that you have given
11 to the FBI Age. Hackbart.

12 Does this refresh your recollection as to what
13 you told Mr. Hackbart on May 2nd, 1972 as to when you had
14 a cold?

15 A I know I had it the second time when I went to
16 the bank.

17 Q Does this statement, Mrs. Rowe, state that you
18 had a cold on the first time you went to the bank?

19 A No, I did not have a cold the first time.

20 Q I am not asking you whether or not you did. I am
21 asking you whether this statement that you have signed on
22 May 2nd, 1972 refreshes your recollection, or whether it
23 does say that you had a cold the first time you went to
24 the bank.

25 THE COURT: The question is objectionable in
form. I will sustain the objection on the grounds of form.

mpb:mg

Rowe-cross

124

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Q Mrs. Rowe, you showed your Social Security card to the bank loan officer the first time you went to --

A Yes.

Q May I ask you to read the end of the paragraph on the next page of the May 2nd, 1972 FBI report?

A Which page? The next page?

Q The very next page. It states "The Social Security card."

A Yes, it is about the Social Security card.

Q That was the card that you showed the bank officer the first time you went?

A The first time I went, I showed him the Social Security card.

Q And that is in the same paragraph wherein you state that you had a cold?

A No, that was the-- well, I don't know.

Q Yes or no?

A The first time I showed him the Social Security card, because they needed it for the ID on the loan application.

Q I am asking you about the statement you made to FBI Agent Hackbart.

THE COURT: What are you asking her, Mr. Friedman?

Q Did you not state to Agent Hackbart that you had

mpb;mg

Rowe-cross

125

1 a cold at the time that you went to the bank for the
2 first time and showed the loan officer your Social Security
3 card?
4

5 A The first time I did not have a cold.

6 Q I am asking you whether the statement says that
7 or not.

8 MS. HYNES: Objection.

9 THE COURT: Yes, I will sustain it.

10 Would you come to the side bar, please.

11 (At the side bar.)

12 THE COURT: It seems to me if it is your conten-
13 tion this is a contradictory paragraph, why don't you
14 offer the paragraph in evidence?

15 MR. DRESCHER: He wanted to read it and he was
16 stopped by objection.

17 MR. LAWYER: Because it is not in --

18 THE COURT: Even asking her what does the state-
19 ment say, well the statement is--

20 MR. FRIEDMAN: She is obviously--

21 THE COURT: The statement is the best evidence.

22 MR. FRIEDMAN: She is obviously not asking me--

23 MR. LSWYER: You are obviously not asking the
24 question properly.

25 THE COURT: If it is your contention that this

Rowe- cross

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1 mpb:mg

2 paragraph you have been referring to is a contradiction
3 of her testimony, I would allow you to put that paragraph
4 in evidence and argue such inferences as you feel are ap-
5 propriate.

6 MR. LAWYER: But in the proper form. He can ask
7 her --

8 THE COURT: I am only ruling on that narrow
9 question to the witness. Questions to the witness I
10 will rule upon as put.

11 MR. FRIEDMAN: Let's get this straight. If
12 I put in this paragraph, am I offering the whole exhibit?

13 THE COURT: No, I don't think you are.

14 MR. FRIEDMAN: Is the government then permitted
15 to put the balance of the statement in?

16 THE COURT: They would be permitted to put in
17 anything that bears upon this paragraph.

18 MR. DRESCHER: To explain it away but nothing
19 else?

20 THE COURT: Yes.

21 MR. DRESCHER: All right.

22 (In open court.)

23 MR. FRIEDMAN: If your Honor pleases, at this
24 time the defendant will offer into evidence that portion
25 of the May 2nd 1972 statement by Mrs. Rowe to the Federal

1 mpb:mg

2 Bureau of Investigation, starting with the paragraph:
3 "When I went the second time, I couldn't go" on to the
4 second paragraph.

5 MS. HYNES: I object to the reading at this
6 time, your Honor.

7 THE COURT: In other words, beginning with the
8 middle paragraph, which starts out "When I went" and
9 going to the next two paragraphs?

10 MR. FRIEDMAN: Yes.

11 THE COURT: That paragraph and the following
12 one?

13 MR. FRIEDMAN: That is correct, your Honor.

14 THE COURT: Ms. Hynes, do you have any objection
15 to the introduction in evidence of those two paragraphs?

16 MS. HYNES: I consent, your Honor.

17 THE COURT: All right, they may be received.

18 MS. HYNES: Can we read them at this point into
19 the record?

20 MR. FRIEDMAN: May I read these paragraphs into
21 evidence at this point?

22 THE COURT: You may. You may read them to the
23 jury.

24 Mark the exhibit appropriately at this point.

25 (Defendant Nisnewitz Exhibit A marked and
received in evidence.)

xx

1 THE COURT: Let us please number the page that
2 has been admitted and make appropriate notation on the
3 face of the exhibit, the paragraphs that are included
4 in my ruling.
5

6 MR. FRIEDMAN: This would be the third page.

7 THE CLERK: All of page 3?

8 MR. FRIEDMAN: No, beginning with "When I went
9 the second time."

10 THE COURT: Mr. Friedman, you may read.

11 MR. FRIEDMAN: Thank you, your Honor.

12 "When I went the second time, the application was
13 in an envelope. He told me to go to the First National
14 Bank on Broadway near Canal or Centre Street. He told me
15 to go in the bank and give it to anyone who takes loan
16 applications. This I did. I went to one of the loan-
17 takers at the bank. The man I talked to asked me or
18 asked how my cold was. I wondered how he knew I had a
19 cold. The banker asked if I had any identification.
20 I said I only had a Social Security card. I said that
21 I had no other identification under my maiden name."

22 Q Did anyone at the bank ask you for any money?

23 A No.

24 Q Did the bank officer who gave you the money, did
25 you know his name?

1 mpb:mg

Rowe-cross

132

2 said that I should send the money order and a copy to the
3 man in Queens Village. I did this. The man was a French--
4 the man's name" - excuse me -- "was a French-sounding name."

5 MR. DRESCHER: May the record show that is the
6 first line on page 5 that follows 4?

7 THE COURT: Yes.

8 Q When you went to Mr. Nisnewitz' office for the
9 first time, did you have any intention of investing that
10 money or any money in Koscot?

11 A No.

12 MR. FRIEDMAN: I have no further questions.

13 THE COURT: Mr. Drescher.

14 MR. DRESCHER: Maybe we can ask for a few minutes'
15 recess.

16 THE COURT: All right. Fine. We will take a
17 recess for ten minutes, ladies and gentlemen.

18 Do not discuss the case.

19 (Recess.)

20 THE COURT: All right, Mr. Drescher.

21 CROSS-EXAMINATION

22 BY MR. DRESCHER:

23 Q Miss Prenclau, this \$50 money order, when did you
24 buy it; when you got your money at the First National City
25 Bank?

1 mpb:mg

Rowe-cross

133

2 A Did I buy that money order at the First National
3 City Bank?

4 Q Yes.

5 A No, I did not buy it there. I gouth it in some
6 office. I don't remember where. I think in a cash-- in a
7 check-cashing place. I'm not sure.

8 Q I don't understand, Ma'am. I didn't ask you
9 where you cahsed it. I asked you--

10 THE C RT: She said she thought she bought it in
11 a check-cashing place.

12 Q Was it a Postal Money Order from the United States
13 Post Office?

14 A I don't know. It was a mney order. The money
15 orders, you can buy them there.

16 It could be an American Express Money Order --
17 I don't know. A money order. I don't remember what --

18 Q To the best of your recollection, that was in a
19 check-cashing place?

20 A I cannot tell you for sure where I bought it.
21 It could have been in an apothecary, a drugstore or - I
22 cannot remember.

23 Q In other words, then, I take it you haven't seen
24 that money order in the possession of the FBI or the United
25 States Attorney since you bought it, is that right?

mpb:mg

Rowe - cross

134

1
2 A No, I didn't.

3 Q You haven't seen it since then?

4 A I did not.

5 Q What?

6 A No, I didn't see the money order.

7 Q Can you fix the time that you were at the bank,
8 the First National City Bank, when you got your \$1,000?
9 What time, approximately, was that?

10 A The time of the day?

11 Q The day. Yes.

12 A I think it was in the morning or-- no, it must
13 have been in the afternoon. Must have been afternoon.
14 It was in the afternoon.

15 Q Two o'clock, three o'clock, later?

16 A No, around two, I believe. I'm not sure.

17 Q After you got the money, did you go directly to
18 your home?

19 A Yes, I got the check and I got the money. I
20 went to buy a money order and I put the money in an
21 envelope, and I went and got me something to eat.

22 Q Let's fix that.

23 Are you sure that you got the \$700 bank draft,
24 the \$300 in cash, is that true?

25 A Yes.

mpb:mg

Ramirez-cross

163

1 the grand jury that his name was Haphner?

2 A Right.

3 Q Did this Dave give you Mr. Nisnewitz' name?

4 A Yes.

5 Q Did you see him after that?

6 A Did I ever see him?

7 Q Yes, see him again?

8 A No, I did not see him again.

9 Q Do you know approximately when you got Mr.
10 Nisnewitz' name?

11 A Offhand, I don't recall when I got the name.

12 Q Incidentally, at that meeting when you were
13 introduced to this fellow Dave, was Nisnewitz there?

14 A At the meeting, he was not.

15 Q In fact, at any meeting that you ever went to for
16 Dare To Be Great, was Nisnewitz there?

17 A No, he was not.

18 Q Did you ever receive any literature from Dare To
19 Be Great?

20 A Yes, I did, in the mail.

21 Q Was Nisnewitz' name involved in that?

22 A No, his name was not involved.

23 Q Do you know whether Mr. Nisnewitz is in any way
24 connected with Dare To Be Great?
25

mpb:mg

Ramirez-cross

164

1
2 A At some meetints, I spoke to other people who
3 were involved in the company.

4 Q And they mentioned Mr. Nisnewitz?

5 A Yes.

6 Q But he was not mentioned as a principal, was he?

7 A Excuse me?

8 Q He was not a principal in Dare To Be Great?

9 A No, he was not.

10 MS. HYNES: Objection, your Honor.

11 THE COURT: I will sustain the objection.

12 Q Do you know the reason that the bank turned you
13 down, the first bank, Kings Lafayette?

14 A I didn't qualify for a loan.

15 Q After being rejected, did you speak to the loan
16 officer about it?

17 A No, I didn't. I didn't speak to him why I was
18 declined.

19 Q Never asked him?

20 A Not that I recall, no.

21 Q On that application, did you put down your true
22 age?

23 A Of course.

24 Q How old were you then?

25 A I am 23 right now.

mpb:mg

Ramirez-cross

1

2

Q How old were you in 1970? 20?

3

A I think so, yes, 20 years old.

4

Q Did you put down you were 20 years of age?

5

A Yes.

6

Q Did you put down how much money you were earning
in Cadillac Motors?

8

A Everything was true in that statement.

9

Q Everything was true?

10

A Everything was true in that statement.

11

Q I believe you testified that after you got Mr.
Nisnewitz' name from this Dave, you telephoned him for
an appointment?

13

14

A Right.

15

Q During this telephone conversation, I believe
it was your testimony that you told him you wanted the
loan, and he said it would cost you \$150?

16

17

18

A Exactly.

19

Q This is what happened on the telephone?

20

A On the telephone call the first time we spoke.

21

Q Had you ever spoken to Mr. Nisnewitz before?

22

A No.

23

Q You knew Mr. Nisnewitz was an accountant,
didn't you?

24

25

A From what I was told by other people from the

1 mpb:mg

Ramirez-cross

166

2 corporation, yes, he was.

3 Q Was anything else discussed in that telephone
4 conversation?

5 A I didn't have the money at that time. He
6 stated--

7 Q I am talking to you about what was discussed
8 during that telephone conversation.

9 A Well, yes, I am telling you. I am saying that
10 I told him I didn't have the money at the present, and
11 he stated "When you get the money, call me," and it
12 ended right there.

13 Q When did you see Mr. Nisnewitz?

14 A Around approximately two weeks later.

15 Q That would be approximately what date?

16 A What date?

17 Q Yes.

18 A Oh, I don't recall.

19 Q You have no recollection?

20 A No, this was such a long time ago, I don't re-
21 call what date or what hour or what week. I can't tell
22 you offhand.

23 Q Let's see if we can reconstruct it. You went on
24 the tour in January of 1970?

25 A Right.

mpb:mg

Ramirez-cross

183

1
2 Q And did two or three days pass before Mr.
3 Nisnewitz called you?

4 A He never called me. I called him back two or
5 three days later and I told him "What's going on?"

6 He explained to me that it is going to be hard
7 for me to get a loan. That he is going to have to send
8 me to a banker--

9 Q Before that-- let me help refresh your recollec-
10 tion. Did Mr. Nisnewitz then tell you that perhaps you
11 should call Mr. Westphal back?

12 A No, I don't recall if he ever told me to call
13 him back or not.

14 Q I refer you to the fifth page of the April 7th
15 statement to the FBI, marked as Defendant Nisnewitz Ex-
16 hibit A.

17 MR. DRESCHER: Wasn't that B for identification?

18 THE COURT: It is B for identification.

19 MR. FRIEDMAN: I'm sorry. B.

20 MS. HYNES; What page, 7?

21 MR. FRIEDMAN: I think it is the fifth page.

22 Q I ask you to look at the paragraph starting
23 "I called Nisnewitz and told him" --

24 A Yes, I read the paragraph.

25 Q Does that refresh your recollection whether you

mpb:mg

Ramirez-cross

184

1 called Mr. Westphal back?

2 A No, you got the wrong story here. This is about
3 Mr. Ramos. This is in reference to-

4 THE COURT: You must have the wrong page.

5 A I got page 5.

6 Q Page 5, the paragraph starting "I called Mr.
7 Nisnewitz" --

8 THE COURT: Hold on, Mr. Friedman.

9 I think he wants you to address yourself to
10 that paragraph (indicating).

11 A Yes, I guess that's true, that did happen. I
12 did call back.

13 Q You had to call Mr. Westphal back in a couple
14 of days, is that correct?

15 A When I called him the first time, he told me my
16 loan was declined.

17 Q Then you spoke to Mr. Nisnewitz and Mr. Nisnewitz
18 asked you to call Mr. Westphal, and you called him back,
19 and Mr. Westphal told you to call him again in two days?

20 A Exactly.

21 Q And when you called Mr. Westphal back, he told
22 you that he would give you the loan if you would give him
23 a co-signer?

24 A Exactly right. Now it is coming to me. I told
25

1 mpb:mg

Ramirez-cross

1c5

2 him no, that I did not want to get no other people involved
3 in my business.

4 Q Was it at this point that you went back to Mr.
5 Nisnewitz?

6 A I called him back. I called him back and he told
7 me to come back within-- go to his office within two or
8 three days.

9 Q Did you go to his office two or three days later?

10 A Right, I did.

11 Q And it was at this time that Mr. Nisnewitz stated
12 to you that he has another bank that you could go to but
13 it would cost you 5% of the loan?

14 A Exactly.

15 Q And you didn't want to do this?

16 A Right, because I felt I gave him \$150. I didn't
17 see why I should pay any more to get a loan.

18 Q But you permitted Mr. Nisnewitz to make out another
19 application which you did take to the First National City
20 Bank?

21 A Right, because I was already in debt with the
22 corporation. I didn't want to get-- I couldn't pull out
23 now because I was almost losing my job, so I just had to
24 do it.

25 Q You were in debt to the corporation?

mpb:mg

Ramirez-cross

195

1
2 A Yes, he told me that -- to hand this to Mr.
3 Ramos, the second application, he had spoke to Mr. Ramos.

X 4 Q He told you to give Mr. Ramos the second appli-
5 cation?

6 A Right. He also gave me a form.

7 Q We will get to that. The W-2 form.

8 A Right, the W-2 form.

9 Q When you got to Mr. Nisnewitz' office, where was
10 this application?

11 A Where was it? It was-- he was folding it and put-
12 ting it into the envelope.

13 Q And you saw him seal the envelope?

14 A Yes.

15 Q Was anything written on the envelope?

16 A Mr. Ramos, First National City Bank.

17 Q Did you not see this application?

18 A No, I did not see the application.

19 Q I believe you testified that at that time Mr.
20 Nisnewitz was typing up a W-2 form?

21 A Right.

22 Q Did you see the W-2 form?

23 A That's when I realized that it was forged.

24 Q Mr. Nisnewitz did not put the W-2 form in the
25 same envelope as the application?

mpb:mg

Ramirez-cross

199

that's an overall price.

Q The question is what specifically it refers to is a W-2 form.

A The W-2 form was only \$10,000 something.

Q When you went to the bank -- this First National City bank with this second application, you had a conversation with Mr. Ramos?

A Right.

Q And Mr. Ramos let you see the application?

A Exactly.

Q This was the first time that you saw any application?

A That's when I looked it over clearly and that's when I noticed there was a lot of false statements in it.

Q While you looked it over, did you fill in any parts of the application such as the purpose of the loan?

A Yes, I did.

Q Did you put down your previous address as 60 Gouverneur Street, New York City?

A Yes, I did.

Q Did you put in your supervisor's name as Mr. Skennion?

A Yes, I did.

Q These were all put in there in your handwriting?

mb:mg

Ramirez-cross

200

1

2

A Yes, I did.

3

Q And then you signed this application?

4

A Yes, I did.

5

Q Knowing that the information was false?

6

A Right. Exactly.

7

Q I think you testified the W-2 you took back from
Mr. Ramos and you ripped it up?

9

A Exactly.

10

Q And the first application that you gave to Mr. Ramos, you also ripped that up?

12

A Right. I ripped it up in his office.

13

Q Isn't it a fact, Mr. Ramirez, that it was you
that initiated the offer to Mr. Ramos of money so that
he would approve your loan?

16

A No, I did not. He initiated. He stated about
the 5%.

18

Q He stated 5%?

19

A Yes.

20

Q That came from Mr. Ramos?

21

A Right.

22

Q That is the reason you gave him \$70?

23

A Right. He told me \$70.

24

Q He told you \$70?

25

A Mr. Ramos. He gave me a white envelope, told me

1 mpb:mg

Rodriguez-cross

2 Do you recall testifying there?

3 A Yes.

4 MR. FRIEDMAN: Ms. Hynes, I refer you to (EJC-81).

5 Q You testified at that time, Mr. Rodriguez, that
6 you went to a few meetings and it was always the same thing,
7 the same faces.

8 A That's right.

9 Q Were any of those faces Mr. Nisnewitz' face?

10 A No.

11 Q Then you told the grand jury that "this guy, the
12 one who told me, Benjamin Martinez"?

13 A I didn't know his last name.

14 Q Martinez is the words you used. You did not know
15 his last name?

16 A Well, I didn't remember it now.

17 Q Did you know Mr. Martinez well?

18 A No.

19 Q You told the grand jury that Mr. Martinez wanted
20 you to go into a distributorship with him?

21 A No. I meant Benny -- one day I was going to the
22 store, the grocery store, and he stopped me in the street,
23 and he told me about, you know, how would I like to make
24 a lot of money.

25 So I asked him, you know, "What is it that I have

mpb:mg

Rodriguez-cross

1 to do?"

2 He says, "You got to sell."

3 So I says, "Sell what?"

4 He says, "Well, I can't tell you that. You have
5 to come to a meeting."

6 So I asked him, well, you know, "What is it?
7 What's this meeting all about?"

8 He says, "Well, I can't tell you because if I
9 tell you, it may turn you off and you may not want to
10 come."

11 So I asked him, you know, "What is it I have to
12 sell, drugs?"

13 He said, "No, it is not like that."

14 And he said-- I said, "Well, you know" -- again,
15 I kept asking him, trying to insist on him telling me what
16 type of meeting this is, and he says, "Listen, just come
17 to the meeting, it is the opportunity of your lifetime.
18 Once you get involved in what I am going to present to
19 you, you are going to be rich. You will make it, and
20 you are definitely going to get places. You are not going
21 to even worry about welfare."

22 And I says, "Okay, I am going to go."

23 So that night they picked me up and he came with
24 a guy named Filande, and I went to that meeting on 57th
25

1 mpb:mg

Rodriguez-cross

244

2 Street.

3 THE COURT: Just a minute. Let me stop you.

4 Would you gentlemen and ladies please come to
5 the side bar?

6 (At the side bar.)

7 THE COURT: I want to make this observation.

8 This witness is rambling on in a conversation with all sorts
9 of people, in a completely unresponsive answer to a ques-
10 tion of yours, Mr. Friedman.

11 You have made no request of me to cut him off.

12 MR. FRIEDMAN: No, sir.

13 THE COURT: And you, Mr. Drescher, have made no
14 request of me to cut him off, nor has the government, and
15 if I don't hear a request of that kind, I am not going to
16 do it.

17 MR. DRESCHER: I understand your Honor's posi-
18 tion.

19 THE COURT: But it seems to me that all counsel
20 here is leaving open the possibility of all kinds of
21 mischief coming into this record in this conversation, and
22 I don't want anybody to feel that I am supposed to be the
23 one here to terminate this in the absence of anybody saying
24 anything to me.

25 MR. LAWYER: The government will protect its

mpb:mg

Rodriguez-cross

245

own record when it feels necessary.

THE COURT: I just want to make it perfectly clear to you gentlemen that I feel that the witness is on a frolic of his own on an unresponsive answer. I will look to you to ask for a ruling. Otherwise, I am not going to do anything.

MR. DRESCHER: I don't know him and I won't even question him. If anybody asks me, I love him.

THE COURT: All I can say is that this is the kind of conversation that I can see could--

MR. DRESCHER: It will end up nowhere.

THE COURT: It could open a lot of doors and it could also end up nowhere.

MR. FRIEDMAN: I think it will end up nowhere.

THE COURT: I just want to make it perfectly clear that I am looking to you to turn it off if you do not desire it.

(In open court.)

BY MR. FRIEDMAN:

Q I gather, Mr. Rodriguez, from your answer, that you went to Koscot with some of the people doing business with them at their distributorship meeting, and you got excited and you thought you could make a lot of money?

A That's right.

mbbr

Ramos-recross

374

1 mbbr
2 Q Then you go on to say "I then called La Morte
3 and told him about the \$70, he, Ramirez, left. La Morte
4 said he wasn't supposed to leave anything, but come over to
5 his, La Morte's bank. I went to the bank and gave him
6 \$3. I kept \$35 for myself."

7 Do you remember making that statement to the FBI?

8 A I believe I made that statement but it is incorrect.

9 MR. FRIEDMAN: No further questions.

10 THE COURT: Anything further?

11 MR. LAWYER: No, we still have no more questions.

12 THE COURT: You may step down.

13 (Witness excused.)

14 MS. HYNES: Government calls Roger La Ferla.

15 ROGER EDWARD LA FERLA, called as
16 a witness on behalf of the government, having been
17 first duly sworn, testified as follows:

18 THE COURT: Mr. La Ferla, you will have to keep your
19 voice up so the last lady and gentleman in that ~~jury~~ can
20 hear you.

21 DIRECT EXAMINATION

22 BY MS. HYNES:

23 Q Mr. La Ferla, what do you do for a living?

24 A I am a carpenter.

25 Q Directing your attention to February of 1972,

1 mbhr

La Ferla-cross

2 and you made an appointment to see him?

3 A I didn't.

4 Mrs. Walther did.

5 Q Mrs. Walther?

6 A Yes.

7 Q And did you and Mr. Walther and Mrs Walther go
8 to Mr. Nisnewitz' office?

9 A Yes, we did.

10 Q Do you know on what day that was?

11 A No, I don't remember the exact date.

12 Q Was it at this first meeting with Mr. Nisnewitz
13 that you and Mr. Walther and Mrs. Walther were present?

14 A Yes.

15 Q Going back to your grand jury testimony of August
16 14, 1972, page 8, Ms. Hynes, do you recall being asked
17 about going to Mr. Nisnewitz' office in Queens and you
18 were asked this question, "You went by yourself?

19 "A Myself and Robert Walther."

20 A Yes.

21 Q Do you remember that question and that answer?

22 A Yes.

23 Q Now you said you are a carpenter, are you not?

24 A Yes.

25 Q Did you have knowledge of carpentry back in February

1 mbbbr
2 of 1972?

La Ferla-cross

411

3 A No. I just started as a carpenter recently.

4 Q Where are you employed now?

5 A By a man in East Northport, Tomack Road, private
6 contractor.

7 Q And you are doing carpentry work there?

8 A Yes.

9 Q Who suggested that you put down on this application
10 that you are a carpenter?

11 A Mr. Nisnewitz.

12 Q You didn't tell him you were a carpenter?

13 A No.

14 Q And that this was a side line?

15 A No.

16 Q Did you have any consideration with Mr.
17 Nisnewitz regarding Dare To Be Great?

18 A We talked about the company and Mr. Turner.

19 Q And it's what?

20 A And Mr. Turner.

21 Q And Mr. Turner?

22 A Yes.

23 Q Mr. Nisnewitz say he knew Mr. Turner?

24 A No.

25 Q Did Mr. Nisnewitz advise you that Dare To Be Great

mbhr

R. Walther-cross

1
2 A Mr. Nisnewitz said that he wasn't sure whether
3 you would get it or not?

4 A That is right.

5 Q But that he would try?

6 A That is right.

7 Q How well did you know Mr. La Ferla then?

8 A Oh, I knew him from my wife, through my wife.
9 They --

10 Q How long did you know him?

11 A I don't know. About a year.

12 Q During the year that you knew Mr. La Ferla was he
13 working?

14 A Off and on as a carpenter, most of the times off.

15 Q But he was a carpenter, wasn't he?

16 A That what he liked to do.

17 Q When did Mr. Nisnewitz mention to you the five
18 per cent that would have to be paid to a bank in case the
19 loan was granted?

20 A Yes, that was after first we couldn't get the
21 loan at the first bank. If that one didn't work then
22 it was almost 90 per cent sure if we went to the second
23 bank that it would go through but we'd have to pay the
24 additional five per cent off the top of the loan when we got
25 the money.

1
2 A And the telephone number that I showed you on the
3 First National City Bank application you have no recollection
4 of that number?

5 A I don't remember it.

6 Q Was Mr. La Ferla working in 1972?

7 A No, he was not.

8 Q Was he a carpenter?

9 A He did carpentry work but he wasn't employed at the
10 time.

11 Q How long do you know Mr. La Ferla?

12 A I have known Roger ten years.

13 Q You know that he is a carpenter?

14 A Yes.

15 Q And he was a carpenter in 1972, February?

16 A No, he wasn't working.

17 Q I understand that but he told us that he was
18 employed as a carpenter then.

19 A No, I didn't say that. I said I know that he is
20 a carpenter. But he wasn't employed at the time.

21 Q Do you know whether he knew carpentry back in
22 February of '72?

23 A Do I know if he was --

24 THE COURT: If he knew carpentry.

25 A Yes, he did. He took it in high school.

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1 and when he finally went to him and when the other people went
2 to him I submit it cannot be credible.
3

4 And I submit that after you review all of this
5 evidence, you are going to find Mr. Wisniewitz not guilty of
6 any of the charges in the indictment.

7 I thank you.

8 THE COURT: Mr. Drescher.

9 MR. DRESCHER: If your Honor please, my friends
10 at the government's table; Mr. Friedman, Madam Foreman,
11 ladies and gentlemen of this jury;

12 I may start off this way, in full sincerity, that
13 this is the darndest case I have ever seen as far as it is
14 a travesty as far as confusion, discrepancies, and con-
15 tradictions, of all the witnesses. Apparently the only
16 one who told the truth in this case was Mr. Ramos; when he
17 took the stand and swore that he had lied previously. That
18 I assume was the truth. Otherwise, you are going to
19 have great trouble in deciding what the facts were in this
20 case and I am going to discuss them with you at length
21 later on.

22 We try awfully hard to give a defendant charged
23 with a crime every possible consideration and break,
24 Just as if you and I were there and we expect that
25 we get great judges, fine judges, capable judges. We have

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